

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF WALKER P. MERRYMAN

23 Volume I, Pages 1 - 263

24

25

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 (The following is the deposition of WALKER
2 P. MERRYMAN, taken pursuant to Notice of Taking
3 Deposition, under Rule 30.02(f), at the offices of
4 Robins, Kaplan, Miller & Ciresi, 1801 K Street N.W.,
5 Washington, D.C., commencing at approximately 8:58
6 o'clock a.m., July 15, 1997.)

7 APPEARANCES:

8 On Behalf of the Plaintiffs:

9 Martha K. Wivell
10 Robins, Kaplan, Miller & Ciresi LLP
11 Attorneys at Law
12 2800 LaSalle Plaza
13 800 LaSalle Avenue
14 Minneapolis, Minnesota 55402

15 On Behalf of Philip Morris Incorporated:

16 Paul J. Robbennolt
17 Dorsey & Whitney LLP
18 Attorneys at Law
19 Pillsbury Center South
20 220 South Sixth Street
21 Minneapolis, Minnesota 55402-1498

22

23

24

25

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 On Behalf of the Tobacco Institute:

2 George S. Flynn

3 Cosgrove, Flynn & Gaskins P.L.L.P.

4 2900 Metropolitan Centre

5 333 South Seventh Street

6 Minneapolis, Minnesota 55402

7

8 Patrick S. Davies and James A. Goold

9 Covington & Burling

10 1201 Pennsylvania Avenue, N.W.

11 Washington, D.C. 20044-7566

12 On Behalf of Lorillard Tobacco Company:

13 Alexandra Schaffer

14 Doherty Rumble & Butler

15 2800 Minnesota World Trade Center

16 30 East Seventh Street

17 St. Paul, Minnesota 55101-4999

18

19

20

21

22

23

24

25

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

C O N F I D E N T I A L

4

I N D E X

EXHIBITS	DESCRIPTION	PAGE MARKED
Plfs' Ex 395	Notice of Taking 30.02(f)	
	Deposition	8
396	Advertisement, Bates	
	TIMN0133708	26
397	"BACKGROUND MATERIAL ON THE	
	CIGARETTE INDUSTRY CLIENT,"	
	dated December 15, 1953,	
	Bates JH000502-6	47
398	Memo dated April 9, 1962,	
	Brady to Little, Bates	
	HK0039151-2	51
399	Letter dated July 30, 1957,	
	EAD to Hahn, Bates	
	MNAT00724279-80	57
400	"SMOKING/HEALTH, An Age-Old	
	Controversy," Bates	
	TIMN395418-21	61
401	Letter dated February 5, 1958,	
	Hahn to Hill, Bates	
	JH000207-11	73
402	Tobacco Institute's Objections	
	and Responses to Plaintiffs'	
	First Set of Interrogatories	79

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1	403	"STATUS REPORT AND UPDATE,	
2		PUBLIC RELATIONS STRATEGY OF U.S.	
3		TOBACCO MANUFACTURERS RE SMOKING	
4		& HEALTH CONTROVERSY," Bates	
5		690020605-12	83
6	404	Memo dated October 18, 1968,	
7		Thompson to Kloepfer, Bates	
8		TIMN0071488-91	89
9	405	Memo dated May 1, 1972,	
10		Panzer to Kornegay, Bates	
11		87657703-6	100
12	406	"THE CIGARETTE CONTROVERSY,	
13		An examination of the facts by	
14		The Tobacco Institute", Bates	
15		T13432-57	108
16	407	Press release, Bates	
17		TIMN0120570-2	122
18	408	Press release, Bates	
19		500518708-11	126
20	409	Press release, Bates	
21		500518759-61	129
22	410	Excerpts from Tobacco and	
23		Health, Bates 500507949	133
24	411	Press release, Bates	
25		TIMN0118245-6	137

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1	412	Press release, Bates	
2		500008079	143
3	413	"The cigarette controversy	
4		eight questions and answers,"	
5		Bates TIMN300233-57	149
6	414	Promotion piece, Bates	
7		TIMN0131089-105	158
8	415	"Fact or Fancy," Bates	
9		TIMN0133740-98	165
10	416	Press release, Bates	
11		TIMN0081352	181
12	417	Press release, Bates	
13		TIMN0120602-3	187
14	418	"The Smoking Controversy: A	
15		Perspective," Bates	
16		TIMN319568-604	190
17	419	Press release, Bates	
18		TIMN277294-6	199
19	420	ABC Network "Nightline"	
20		interview transcript dated	
21		February 2, 1984, Bates	
22		502371212-23	203
23			
24			
25			

1 421 "Cigarette Smoking and Chronic
2 Obstructive Lung Disease: The
3 Major Gaps in Knowledge," Bates
4 TIMN319476-90 207
5 422 Letter dated 4th May, 1982,
6 Roe to Thornton, Bates
7 100432193-9 211
8 423 "SURVEY OF CANCER RESEARCH
9 with emphasis upon POSSIBLE
10 CARCINOGENS FROM TOBACCO,"
11 Bates 501932947-8 215
12 424 "A Review of Work Pertaining
13 to the Possible Carcinogenic
14 Activity of Cigarette Smoke,"
15 Bates LG0062293-342 222
16 425 "L&M - A PERSPECTIVE REVIEW,"
17 Bates 2021382496-8 247
18
19
20
21
22
23
24
25

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 P R O C E E D I N G S

2 (Plaintiffs' Exhibit 395 was
3 marked for identification.)

4 (Witness sworn.)

5 WALKER P. MERRYMAN

6 called as a witness, being first duly
7 sworn, was examined and testified as
8 follows:

9 ADVERSE EXAMINATION

10 BY MS. WIVELL:

11 Q. Good morning. Would you please introduce
12 yourself to the ladies and gentlemen of the jury.

13 A. My name is Walker Merryman.

14 Q. And sir, by whom are you employed?

15 A. The Tobacco Institute.

16 Q. How long have you been with The Tobacco
17 Institute?

18 A. Approximately 21 years.

19 Q. And what's your position at The Tobacco
20 Institute?

21 A. I'm a vice-president of the institute.

22 Q. Do you have a particular title?

23 A. Director of communications.

24 MS. WIVELL: Excuse me. We have to go
25 off.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 THE REPORTER: Off the record, please.

2 (Discussion off the record.)

3 BY MS. WIVELL:

4 Q. Mr. Merryman, you said you were director of
5 communications for the Tobacco Institute. What does
6 that job entail?

7 A. It entails answering questions from members of
8 the news media about issues that affect the industry.

9 Q. And by "industry," what do you mean?

10 A. The tobacco industry.

11 Q. Would it be fair to characterize your job as
12 being the voice of the tobacco industry?

13 A. Well I'm one of the people who will speak for
14 the cigarette manufacturers.

15 Q. Okay. You say "cigarette manufacturers." Would
16 you tell us a little bit about the -- how -- what The
17 Tobacco Institute actually is?

18 A. We're the trade association for cigarette
19 manufacturers here in the United States.

20 Q. You have members in addition to cigarette
21 manufacturers; don't you?

22 A. We do, although the cigarette manufacturers are
23 the ones who fund our operations.

24 Q. Speaking of funding, how is your operation
25 funded?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. It is based on dues assessments which are, as I
2 recall, based on market share of the individual
3 companies.

4 Q. Would it be fair to say that the dues for the
5 tobacco companies are based on the number of
6 cigarettes they sell in the United States?

7 A. As I understand it, that's correct.

8 Q. So Philip Morris, since it has the most market
9 share,, selling the most cigarettes, would pay the
10 most dues; right?

11 A. I believe that's correct.

12 Q. Okay. And R. J. Reynolds, having the next
13 portion of -- the next-largest portion of the market
14 share, would pay the next-largest dues after Philip
15 Morris.

16 A. I believe so.

17 Q. Brown & Williamson, being third in market share,
18 would pay the third-largest segment of dues; right?

19 A. That would be correct.

20 Q. Okay. Now who are the other three cigarette
21 manufacturers who are members of The Tobacco
22 Institute?

23 A. In addition to Philip Morris, there's R. J.
24 Reynolds, Brown & Williamson, and Lorillard.

25 Q. But there have been other members in the past;

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 haven't there?
- 2 A. Over the years there have been, as I recall,
- 3 other members, yes.
- 4 Q. Now I'm not sure that you answered my question.
- 5 I asked you if you were the voice of The Tobacco
- 6 Institute. It would be fair to characterize your job
- 7 as -- as exactly that; wouldn't it, sir?
- 8 A. Well except I'm not the only person.
- 9 Q. You're not the only voice.
- 10 A. I'm not the only person who speaks for the
- 11 industry or the institute.
- 12 Q. Okay. Who are the other people at the institute
- 13 who speak for the tobacco industry?
- 14 A. Presently at the institute, Tom Loria, one of my
- 15 colleagues, is a spokesman for the institute.
- 16 Q. Are there any others?
- 17 A. No, not who -- who act in our capacity, no.
- 18 Q. Okay. In the past there have been other
- 19 spokespersons for the institute; haven't there?
- 20 A. There have.
- 21 Q. For example, would you name them?
- 22 A. Connie Drath, Bill Dwyer, Tom Howard, Pamela
- 23 Jones, Alan Byrn. There may have been others that I
- 24 can't recall.
- 25 Q. Well isn't it also true that from time to time

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 officers of The Tobacco Institute speak out to the
2 public on behalf of the institute?

3 A. I don't really know what you mean, I guess.

4 Q. Well wasn't there a person by the name of
5 Korngay who was an officer of The Tobacco Institute?

6 A. What was the name?

7 Q. Korngay.

8 A. Kornegay?

9 Q. Kornegay. I'm sorry, I just was mispronouncing
10 it.

11 And he was an officer of The Tobacco Institute;
12 wasn't he?

13 A. Yes, he was.

14 Q. And he would from time to time make public
15 statements concerning the tobacco industry; wouldn't
16 he?

17 A. I recall that on occasion Mr. Cornigay gave
18 statements.

19 Q. And in fact there were other officers of The
20 Tobacco Institute who would give public statements
21 concerning issues relevant to the tobacco industry
22 from time to time; weren't there?

23 A. I suppose that on some occasions there were
24 other people at the institute who gave public
25 statements.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Okay. Now sir, you've been deposed before;
2 haven't you?

3 A. Yes, ma'am, I have.

4 Q. And you've been deposed on a number of different
5 occasions in lawsuits relating to smoking-and-health
6 issues; haven't you?

7 MR. FLYNN: Objection, it's argumentative
8 and vague. You can answer.

9 A. As I --

10 As I said, I've been deposed before.

11 Q. All right. How many times have you been
12 before -- sorry. Strike that.

13 How many times have you been deposed before in
14 cases relating to smoking-and-health issues?

15 A. There's been one other case in which I've been
16 deposed where -- two other cases, I'm sorry, where
17 smoking-and-health issues were raised.

18 Q. Now sir, in addition to the depositions, you
19 have actually testified in trials relating to
20 smoking-and-health issues; haven't you?

21 A. Not trials plural. I've testified in one trial.

22 Q. And when was that?

23 A. I don't recall the dates. Several years ago.

24 Q. It was in 1992; wasn't it?

25 A. I'm sorry, I don't recall.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Okay.

2 A. It may have been.

3 Q. You testified for a number of days?

4 A. I did.

5 Q. And just so we're clear here, that was a case in
6 which a smoker alleged that he had been injured as a
7 result of his smoking; correct?

8 A. I believe that's correct.

9 Q. Sir, before the deposition began I had the court
10 reporter mark the notice of deposition as Exhibit
11 395, and he's given that to you. Have you seen this
12 notice before?

13 A. No.

14 Q. All right. Would you take a moment just to look
15 it over, please.

16 MR. FLYNN: The record should reflect that
17 there's two other notices of his deposition. You've
18 presented one. It's really a 30.02(f) deposition
19 notice.

20 MS. WIVELL: I object to your speaking
21 objections or your -- your speech.

22 MR. FLYNN: It's not a speech, it's just
23 clarifying what the record reflects.

24 A. All right.

25 Q. You've had the opportunity now to read Exhibit

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 395; correct?

2 A. I have.

3 Q. And that is the notice of taking deposition for
4 the deposition of The Tobacco Institute pursuant to
5 Rule 30.02(f); correct?

6 A. Correct.

7 Q. And this deposition says that pursuant to Rule
8 30.02(f), The Tobacco Institute shall designate one
9 or more representatives who shall be qualified to
10 testify as to matters known or reasonably available
11 to The Tobacco Institute concerning the following
12 topics. Have I read it correctly so far?

13 A. You have.

14 Q. And then there are four topics listed; right?

15 A. There are.

16 Q. And the first topic is public statements
17 relating to the health effects of smoking and
18 addiction.

19 A. Yes.

20 Q. The second topic is health effects of smoking.

21 A. Yes.

22 Q. The third topic is addiction.

23 A. Yes.

24 Q. The fourth is lobbying; right?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now sir, do you understand that your deposition
2 is being taken here today on the first three of those
3 subjects?

4 A. Yes.

5 Q. Now -- (coughing) pardon me.

6 Do you understand that this Exhibit 395 requires
7 The Tobacco Institute to produce a person qualified
8 to testify as to these matters in this notice?

9 MR. FLYNN: I object, it's argumentative
10 and overbroad, vague and ambiguous.

11 MS. WIVELL: And I object to your speaking
12 objections and your violation of the court's order
13 concerning objections.

14 MR. FLYNN: That's not a speaking
15 objection. It stated the grounds and it stated the
16 reasons.

17 MS. WIVELL: And it violates the court's
18 order.

19 MR. FLYNN: No, it doesn't. But go ahead
20 and answer the question if you have it in mind, if
21 you can answer it.

22 A. Would you mind repeating the question.

23 Q. Certainly.

24 Do you understand that Exhibit 395 requires The
25 Tobacco Institute to produce a person qualified to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 testify as to these matters in the notice?

2 MR. FLYNN: Same objections, but go ahead
3 and answer if you can.

4 A. Yes, that's -- that's my understanding from
5 reading it.

6 Q. And you understand that this notice is to The
7 Tobacco Institute; right?

8 A. Well that's what it says, yes.

9 Q. All right. And you understand that you've been
10 designated as the corporate representative of The
11 Tobacco Institute to speak on its behalf in this
12 deposition today; right?

13 A. Correct.

14 Q. And you've consented to speak to -- for The
15 Tobacco Institute at this deposition today?

16 A. Yes.

17 Q. And in fact you speak as your career for The
18 Tobacco Institute; don't you, sir?

19 MR. FLYNN: Objection, it's argumentative,
20 vague and overbroad.

21 A. I'm -- I do not understand the question.

22 Q. Okay. Well as part of your job as director of
23 communications, you speak on behalf of The Tobacco
24 Institute every day; don't you?

25 MR. FLYNN: Objection, it's repetitive.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 It's a double question. Every day?

2 A. Fact of the matter is, I -- I don't speak every
3 day on behalf of The Tobacco Institute.

4 Q. All right. But you give public statements on
5 behalf of The Tobacco Institute as part of your job
6 as director of communications; right?

7 A. That is a part of my job, yes.

8 Q. Now do you have authority to speak on behalf of
9 The Tobacco Institute today during this deposition?

10 MR. FLYNN: Objection, it's vague and
11 argumentative.

12 A. Well the -- I -- I've been designated as -- as
13 the spokesman for the institute, so to that extent I
14 would agree with --

15 Yes, I -- I -- I do have authority.

16 Q. Okay. And so for the -- at least the purpose of
17 this deposition today, you're The Tobacco Institute
18 spokesperson there; aren't you?

19 A. Correct.

20 Q. Now do you understand that the questions that --
21 I'm sorry. Strike that.

22 Do you understand that the answers you give in
23 this deposition to the questions I ask must be
24 answered fully based not only on your personal
25 knowledge but also knowledge available to The Tobacco

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Institute?

2 MR. FLYNN: I object to that question as
3 overbroad and vague and not his obligation, but you
4 can address it if you can.

5 MS. WIVELL: And I object to your
6 continuing violation of the court's order concerning
7 objections. And if it continues, we'll call the
8 court about this issue.

9 MR. FLYNN: That's fine. But you ask
10 questions like that and it's just inappropriate.
11 Those rules don't prohibit --

12 MS. WIVELL: And all you have to say --

13 MR. FLYNN: -- clarifying the question.

14 MS. WIVELL: -- is objection to the
15 question and that's it.

16 MR. FLYNN: But that doesn't focus on the
17 problem with the question. Okay? I know what the
18 rule says and I know what's appropriate.

19 MS. WIVELL: Well then I'd like to you live
20 by them.

21 MR. FLYNN: Well we'll deal with it one by
22 one. If you ask appropriate questions, we won't have
23 these problems.

24 A. I've lost the question. I'm sorry.

25 Q. Do you understand that the answers you give in

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 this deposition to the questions I ask must be
2 answered fully based not only on your personal
3 knowledge but also knowledge available to The Tobacco
4 Institute?

5 MR. FLYNN: Same objection.

6 A. I will do my best to answer your questions to
7 the best of my ability with the information that I
8 have.

9 Q. And you know that you're answering on behalf of
10 The Tobacco Institute; right?

11 A. I am answering on behalf of The Tobacco
12 Institute, that's right, yes.

13 Q. Now I'm curious about why you've qualified your
14 answer. Did you prepare by going back and looking at
15 Tobacco Institute documents for this deposition?

16 A. I did spend some time reviewing some documents.

17 Q. Have you made an investigation beyond your
18 personal knowledge about the subjects of the
19 deposition notice?

20 A. What do you mean by my personal knowledge?

21 Q. Well beyond your personal knowledge. Did you go
22 back and try and find everything on the subject of
23 addiction so that you could answer questions about
24 that in this deposition today?

25 A. I don't think it would have been possible for me

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 to find everything about addiction.

2 Q. Did you try?

3 A. No.

4 Q. All right. How about the issues of public
5 statements relating to the health effects of smoking
6 and addiction, did you go back and do research to try
7 and find out so that you could answer on behalf of
8 The Tobacco Institute?

9 A. I reviewed documents that touched on all three
10 of these issues.

11 Q. Well sir, perhaps you didn't understand my
12 question. Let me rephrase it.

13 Did you make an investigation of documents from
14 the files of The Tobacco Institute to determine what
15 statements it made -- it has made in the past
16 relating to health effects of smoking and addiction?

17 MR. FLYNN: Objection as asked and
18 answered.

19 A. I did not make a search of the files at the
20 Tobacco Institute. No, I did not.

21 Q. Well let me ask you this then: Did you make a
22 search of the files of The Tobacco Institute
23 concerning the health effects of smoking to find out
24 what the institute knew that might be beyond your own
25 personal knowledge?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. No.

2 Q. Well sir, I'm curious, then, how you prepared
3 for this deposition.

4 A. As I mentioned a moment ago, I did review
5 documents that we were told would be a part of this
6 deposition. I did not review all of them; it would
7 not have been possible for me to do so. However, I
8 did my best to review those documents which we were
9 told might be of interest to you in this deposition.

10 Q. Well beyond the documents that I disclosed that
11 I might use in this deposition, did you review any of
12 the files of The Tobacco Institute to be able to
13 answer the questions that you're designated as the
14 spokesperson -- person for in this deposition?

15 A. I did --

16 MR. FLYNN: Object -- go ahead. I object,
17 it's argumentative, assumes an obligation not
18 imposed. But go ahead, answer.

19 A. I did not.

20 Q. Would it be fair to say that your preparation
21 for this deposition was limited to reviewing the
22 documents that I disclosed?

23 MR. FLYNN: I object, it's vague and
24 ambiguous. What do you mean "in preparation?"

25 MS. WIVELL: And I object, I really object

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 to your continuing violation of the court's order.
2 When my partners have said more than the word
3 "objection," attorneys for the defendants in this
4 case have accused them over and over of coaching, and
5 that is clearly what you are doing here. And I
6 object to your violation of the court's order, and if
7 it continues, we'll call the court.

8 MR. FLYNN: And I -- I'm not coaching, I'm
9 helping the witness and counsel understand what
10 "preparation" means. You give the witness a
11 question and then you don't tell him what it means,
12 and you're narrowing -- I don't --

13 I don't want to make a whole lot of other
14 comments because then I will get into a coaching
15 mode. I don't want to do that.

16 MS. WIVELL: You are in a coaching mode,
17 Mr. Flynn.

18 MR. FLYNN: Well you read it as you wish.
19 If the court --

20 MS. WIVELL: Please note your objection by
21 saying the word objection, which is what the court
22 order required.

23 MR. FLYNN: And it allows the grounds.

24 MS. WIVELL: I don't need your comments
25 about the validity of my questions, sir, that's for

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the court.

2 MR. FLYNN: The grounds need to be stated,
3 and the problem with the question, if appropriate,
4 needs to be stated. So I'll exercise my rights under
5 the rules and the order as it states.

6 Go ahead.

7 BY MS. WIVELL:

8 Q. Now sir, during this deposition, can we have an
9 agreement that I ask -- if I ask a question with the
10 word "you" in it, unless I specify otherwise, the
11 word "you" means both you and The Tobacco Institute?

12 MR. FLYNN: Objection, it's overbroad.

13 A. I would really appreciate it if you'd be very
14 clear on what you mean when you say "you."

15 Q. Well I'm right now trying to clarify that.

16 Can we have an agreement that unless I say
17 otherwise, when I use the word "you," since you're
18 speaking for The Tobacco Institute here today, that
19 we mean both you, Walker Merryman, and you, The
20 Tobacco Institute?

21 MR. FLYNN: Same objection.

22 A. I would think not, frankly. I would appreciate
23 it if you would be very clear when you're asking the
24 question if you're referring to me personally, or The
25 Tobacco Institute, or the industry, or a single

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 company, or whatever your -- your meaning really is.

2 Q. Okay. Well if that's what you'd like, then
3 that's what we'll do. But you do understand that the
4 answers to the questions you give are based not only
5 on what you know personally, but what you learned in
6 preparation for this deposition; correct?

7 A. What I know personally and what I learned in
8 preparation for this deposition will form the basis
9 of my answers, yes.

10 Q. All right. But just so we're clear here, beyond
11 the documents that I provided to The Tobacco
12 Institute, you made no search to try and find out
13 what knowledge was available to The Tobacco Institute
14 on the first three subjects of this deposition
15 notice; is that correct?

16 A. I did no special preparation that you suggest in
17 that regard, no.

18 Q. Now sir, I think we went over this before, but
19 you have for years been a spokesperson for The
20 Tobacco Institute; haven't you?

21 MR. FLYNN: Objection, repetitive. This is
22 the third time.

23 A. I am a spokesman for The Tobacco Institute,
24 that's correct.

25 Q. And in fact, one of The Tobacco Institute's ads

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that was published some years ago featured you;

2 didn't it?

3 A. Yes, it did.

4 (Plaintiffs' Exhibit 396 was marked
5 for identification.)

6 BY MS. WIVELL:

7 Q. Sir, showing you what's been marked as Exhibit

8 396, this is one of the ads that The Tobacco

9 Institute took out from time to time; isn't it?

10 A. It is an ad that The Tobacco Institute took out,
11 yes.

12 Q. Okay. And it features you; doesn't it, sir?

13 A. It does.

14 Q. An earlier version, a younger version of you;
15 right?

16 A. Yes.

17 Q. Approximately how many years ago was this ad
18 taken out?

19 A. Oh my, I'm afraid I don't know.

20 Q. All right. Can you give me your best estimate?

21 A. Ten, a dozen years ago. That's really an
22 off-the-wall guess. I couldn't be held to it.

23 Q. All right. For the record, I'd like to identify
24 Exhibit 396 as TIMN0133708; is that correct, sir?

25 Have I identified this correctly?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. 0133708.

2 Q. Yes.

3 A. Yes.

4 Q. And now this is an ad that is entitled "I'll
5 fill in the government's blanks;" correct?

6 A. It is.

7 Q. And in fact in this ad you offer on behalf of
8 The Tobacco Institute to make public presentations,
9 appear on radio or TV, appear at professional
10 societies, to speak on behalf of The Tobacco
11 Institute; isn't that right?

12 MR. FLYNN: Objection, the document speaks
13 for itself.

14 A. There -- there are no such representations in
15 there about where I might appear. Doesn't say
16 anything about radio or television or -- or speaking
17 engagements.

18 Q. Well it says at the bottom, "To arrange for free
19 guest appearance write The Tobacco Institute;"
20 doesn't it?

21 A. You're right, it does.

22 Q. All right. And essentially this ad was taken so
23 that -- strike that.

24 This ad was placed by The Tobacco Institute so
25 that people would know that you were available to do

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 speaking engagements; right?

2 A. That's correct.

3 Q. Now this ad says, "No judge would -- judge would
4 decide a case without hearing both sides. But a lot
5 of people have done just that on the subject of
6 smoking;" correct?

7 A. That's the first sentence.

8 Q. All right. And sir, this ad was taken so that
9 people would know you were able -- you were available
10 to provide The Tobacco Institute's side of the story
11 concerning smoking and health; right?

12 A. It doesn't say anything about smoking and
13 health, it just says the subject of smoking.

14 Q. All right. Well, but you have spoken on the
15 subject of smoking and health from time to time;
16 haven't you?

17 A. Oh, that's one of the subjects that I've
18 occasionally talked about.

19 Q. Well you've been on --

20 A. There have been a number of others.

21 Q. You've been on Nightline discussing the subject
22 of smoking and health; haven't you?

23 A. I've discussed smoking and health and other
24 things on Nightline.

25 Q. Okay. But you've been on Nightline to discuss

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoking and health; haven't you, sir?

2 A. And other subjects, yes, uh-huh.

3 Q. Now you've also been on various network TV shows
4 talking about the issues of smoking and health;
5 haven't you, sir?

6 A. Again it's not limited to smoking and health,
7 but that's one of the things that they've asked me
8 about, yes.

9 Q. I understand, sir, that you may talk on other
10 things, but this deposition notice says we're going
11 to talk about public statements relating to the
12 health effects of smoking and addiction, and so I'm
13 trying to focus in just on the subject of smoking and
14 health, --

15 MR. FLYNN: Objection.

16 Q. -- with the understanding that you -- that there
17 may be other subjects. But that's just the subject
18 of our deposition today. Okay?

19 MR. FLYNN: Objection. It's just an
20 argumentative statement; there's no question in
21 there. Ask the witness questions, don't give him
22 speeches.

23 Q. Now sir, you have been on network television
24 discussing smoking-and-health-related issues; haven't
25 you?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Oh, yes, and others.

2 Q. And you have been on TV -- I'm sorry. Strike
3 that.

4 You've been on radio shows discussing smoking
5 and health; haven't you?

6 A. I've been on radio as well discussing tobacco
7 issues, yes.

8 Q. And you've made personal appearances at other
9 kinds of functions discussing
10 smoking-and-health-related issues; haven't you?

11 A. Yes, I have.

12 Q. What kinds of public -- I'm sorry.

13 What kinds of other functions have you attended
14 where you gave presentations on smoking-and-health
15 issues?

16 A. Well none of it was ever limited to just smoking
17 and health; however, we were invited to speak to
18 civic clubs such as Rotary clubs, tobacco
19 organizations, tobacco grower groups, tobacco
20 warehouse groups, tobacco wholesaler groups, often
21 asked to provide a speaker to give our perspective
22 on -- on tobacco issues that were prominent at the
23 time. Those are some of the speaking engagements
24 that I recall we participated in.

25 Q. You've even traveled to Minnesota to have

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 meetings and give speeches; haven't you?

2 A. I don't recall I ever gave a speech, certainly
3 not a public event in Minnesota. I have been there
4 on occasion, that's true.

5 Q. On -- on Tobacco --

6 A. On Tobacco Institute business.

7 Q. Thank you. Okay.

8 Now Exhibit 396 goes on to talk about -- it says
9 in the third paragraph, "So if you've got an audience
10 who would be interested in some of the facts the
11 government ignored when it embarked on the current
12 anti-smoking campaign, I'd like to set the record
13 straight and answer their questions." Is that right?

14 A. That's what it says, yes.

15 Q. All right. Sir, and isn't it true that when you
16 have made public presentations on
17 smoking-and-health-related issues, you wanted to set
18 the record straight; didn't you?

19 A. Part of what we wanted to do was present
20 perspectives that we thought weren't being heard,
21 that's correct.

22 Q. Okay. Now you go on to say -- or the ad goes on
23 to say in the next paragraph, "But...I think the
24 American public has the right to the whole truth."
25 Is that right?

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. "Not because I want to make new converts or keep
2 anybody from quitting, I don't. But because I think
3 the American public has the right to the whole
4 truth," yes.

5 Q. Now sir, you would agree that the American
6 public has the right to the whole truth about smoking
7 and health; wouldn't you?

8 A. They do, yes.

9 Q. All right. And in fact you intended every time
10 you spoke on behalf of The Tobacco Institute to
11 provide the whole truth; didn't you?

12 A. I intended to present the tobacco industry's
13 perspective so that the public could have as much
14 information as possible.

15 Q. I'm not sure that answers my question. When you
16 spoke on behalf of The Tobacco Institute, did you
17 want to provide the American public with the whole
18 truth?

19 MR. FLYNN: Objection, it's argumentative
20 and repetitive. He just answered that.

21 A. The Tobacco Institute represents the cigarette
22 manufacturers. I present the industry's perspectives
23 on these issues so that the public can receive, if it
24 wishes, information from us. They can get
25 information on other parts of the controversies from

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 other interested parties, and they have.

2 Q. Move to strike as non-responsive.

3 Sir, are you saying that when you spoke
4 publicly, you were not intending to provide the whole
5 truth --

6 MR. FLYNN: It's argumentative.

7 Q. -- on the subject of smoking and health?

8 MR. FLYNN: Argumentative and repetitive.
9 He said exactly what he was doing.

10 A. I believe I've answered the question.

11 Q. And I respectfully move to strike as
12 non-responsive. So please --

13 A. We provide --

14 We provide information from the tobacco
15 industry's perspective. That is my answer to your
16 question.

17 Q. Well sir, it says right here in this ad "...I
18 think the American public has the right to the whole
19 truth." Are you telling us that you didn't provide
20 the whole truth when you went out and spoke on behalf
21 of The Tobacco Institute?

22 MR. FLYNN: Objection, it's argumentative
23 and repetitive. The fact you say it with a negative
24 doesn't change it. It's been asked and answered.

25 A. I don't think I can better answer your question

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 than the way in which I already have. It's clear
2 that the tobacco industry -- The Tobacco Institute
3 represents the cigarette manufacturers. We present
4 their perspective on the issues.

5 Q. Move to strike as non-responsive.

6 My question can be answered simply "yes" or
7 "no," sir.

8 You say here that you think the American public
9 has the right to the whole truth. When you went out
10 to speak on behalf of The Tobacco Institute, did you
11 give the portion of the public that you were speaking
12 to the whole truth?

13 MR. FLYNN: Objection, repetitive. It's
14 the fifth time you've asked it now. And he doesn't
15 have an obligation to just "yes" or "no" anything.
16 At some point it becomes too repetitive.

17 MS. WIVELL: I object to your --

18 MR. FLYNN: Well --

19 MS. WIVELL: -- continuing violation of the
20 court's order.

21 MR. FLYNN: -- you've asked it five times.
22 You're just arguing with him.

23 MS. WIVELL: Let's call the court.

24 MR. FLYNN: If you want to call the court,
25 let's call the court. You can't ask the question

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 five times and just ask it more emphatically each
2 time.

3 MS. WIVELL: I move to strike, sir.

4 THE REPORTER: Let's go off the record,
5 please.

6 (Discussion off the record.)

7 BY MS. WIVELL:

8 Q. I move to strike the previous non-responsive
9 answer.

10 And my question can be answered "yes" or "no,"
11 sir. It says here in this ad that you think the
12 American public has the right to the whole truth.
13 When you went out to speak on behalf of The Tobacco
14 Institute, did you give the portion of the public
15 that you were speaking to the whole truth?

16 MR. FLYNN: Same objection. It's
17 repetitive, it's asked and answered, it's
18 argumentative, and he doesn't have to answer any
19 question "yes" or "no."

20 A. My answer remains the same. We present the
21 tobacco industry's perspective from The Tobacco
22 Institute, and I just don't believe that it's
23 possible for me to say "yes" or "no" in answer to
24 your question.

25 Q. All right. Is the statement made here that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 "...I think the American public has the right to the
2 whole truth," is -- is that a correct statement?

3 MR. FLYNN: Same question, sixth repetition
4 of it.

5 A. Taken in context, that is a correct statement.

6 Q. So you believe it is important that the American
7 public have the right to the whole truth about
8 smoking.

9 A. I think the public has the right to the whole
10 truth, yes.

11 Q. Okay. And sir, you would agree that when The
12 Tobacco Institute makes a public statement about
13 smoking, that the American public has a right to rely
14 on that statement; doesn't it?

15 A. I think that everything The Tobacco Institute
16 says is -- is accurate, yes.

17 Q. That's not my question, sir. My question is:
18 When the Tobacco Institute makes a public statement
19 about smoking, the American public has a right to
20 rely on that statement; doesn't it?

21 A. I don't know what you mean by right to rely upon
22 the statement.

23 Q. Well you want people to believe what you say
24 about the tobacco industry; don't you?

25 A. Certainly.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And it's reasonable for people to believe what
2 the tobacco industry says -- I'm sorry, strike that.

3 It's reasonable for people to believe what the
4 tobacco industry says about smoking; isn't it?

5 A. I don't know if it's reasonable for people to
6 believe.

7 Q. Well --

8 A. I -- I don't know what -- what that means.

9 Q. Well sir, you've spoken out on behalf of the
10 tobacco industry for the better part of 20 years;
11 right?

12 MR. FLYNN: It's repetitive. You've asked
13 that eight times.

14 A. Yes.

15 Q. And sir, you intended people to believe what you
16 were saying; isn't that right?

17 A. I think anyone would like to have people believe
18 them when they say something, certainly.

19 Q. And you're a person who would like --

20 You, Walker Merryman, wanted people to believe
21 what you said about smoking-and-health issues; didn't
22 you?

23 A. Every time I spoke for The Tobacco Institute, I
24 wanted people to believe what -- what I was saying,
25 what I was talking about, no matter what issue it

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 was.

2 Q. And you intended them to be able to believe you;

3 didn't you?

4 A. Intended them to be able to believe me.

5 Q. Yeah.

6 A. That's a bit convoluted. Can you be more clear?

7 Q. Well you thought what you were saying was

8 reliable.

9 A. I thought what I was saying was accurate and --

10 Certainly.

11 Q. And --

12 A. No question about it.

13 Q. -- so you wanted people to be able to rely on

14 what you were saying.

15 A. I'm confident that what The Tobacco Institute

16 has said on issues is accurate, and I certainly would

17 hope people would believe what we said.

18 Q. All right. Well you intended people to be able

19 to rely on what you were saying; didn't you?

20 A. Well you still --

21 MR. FLYNN: Objection.

22 A. -- haven't told me what you mean by that.

23 Q. Well you've used the word "rely;" haven't you?

24 How do you define it, sir?

25 A. Well it's not up to me to define it, I'm

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 afraid. It's up to you. You're asking the
2 question. I don't want to be argumentative, --
3 Q. Well you --
4 A. -- but it seems to me very clear that you're
5 responsible for telling me what you mean in the
6 question.
7 Q. Sir, how do you use the word "rely" when you use
8 it in conversation?
9 A. Well I probably use it in a number of different
10 ways. But -- but frankly, I'm not the one asking the
11 question here, you are. So if you wouldn't mind
12 clarifying, I'd appreciate it.
13 Q. So you're having trouble with defining the word
14 "rely;" is that right?
15 A. Well the way you're using it, it seems vague to
16 me, and I don't know what you mean.
17 Q. Well how about "believe." You wanted people to
18 be able to believe what you were saying when you
19 spoke on behalf of the tobacco industry; isn't that
20 true?
21 A. Yes.
22 Q. And you wanted people to act on what you said
23 when you were speaking on behalf of The Tobacco
24 Institute; didn't you?
25 A. "Act." No.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. So you didn't want people --

2 You didn't want to reassure people when you made
3 statements about smoking and health that smoking and
4 health was safe?

5 MR. FLYNN: Objection, it's just
6 argumentative.

7 A. I never said such a thing.

8 Q. Well sir, let me ask you: Did you want to
9 reassure people when you made statements about
10 smoking and health that smoking and health was safe?

11 MR. FLYNN: Objection, it's overbroad, it's
12 repetitive.

13 A. I -- I'm -- I'm baffled. Statements such as
14 that were not made by me.

15 Q. No. I'm asking you, sir, did --

16 When you made statements about smoking and
17 health, did you intend to suggest that smoking was
18 safe?

19 A. No.

20 Q. Okay. Did you intend to suggest that smoking
21 was unsafe?

22 A. I suggested that there were risks associated
23 with smoking.

24 Q. So the answer to my question is no, you didn't
25 mean to suggest that there -- that smoking was

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 unsafe.

2 MR. FLYNN: Objection. The answer is just
3 what he said. If you want to ask him another
4 question, ask him.

5 MS. WIVELL: I object, again, to your
6 speaking objections.

7 MR. FLYNN: Well it's not a proper form of
8 examination.

9 MS. WIVELL: And that's not for you to
10 decide, Mr. Flynn.

11 MR. FLYNN: Well you're not at liberty to
12 ask anything any way, any time, about everything you
13 want and abuse the witness. There's no intent of
14 that in that order. You have the right to ask
15 questions and to get answers, but not to those kinds
16 of questions.

17 MS. WIVELL: Sir, you have the right to
18 instruct the witness not to answer questions on the
19 issue of privilege only. Everything else is reserved
20 for trial. It's not for you to decide.

21 MR. FLYNN: Well I'm aware what that rule
22 says. I'm also aware of your obligations as an
23 interrogating attorney, and these questions are not
24 appropriate.

25 MS. WIVELL: Well we'll let the judge

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 decide that when -- when he calls.

2 MR. FLYNN: Well he may well.

3 MS. WIVELL: Oh we're going to.

4 MR. FLYNN: Well that may be.

5 MS. WIVELL: Because I intend, if I don't
6 get done with the questions during the time allotted,
7 to bring a motion to require this witness to come to
8 Minneapolis because of your inappropriate conduct.

9 MR. FLYNN: You can't listen to an answer,
10 then restate the answer in a different form --

11 MS. WIVELL: Mr. Flynn, I don't need
12 instructions from you.

13 MR. FLYNN: -- and then say isn't that your
14 answer?

15 MS. WIVELL: Well that's inappropriate
16 question. It has nothing to do with objections.

17 MS. WIVELL: State your objection, sir.

18 MR. FLYNN: It's not an objection to the
19 question, it's an objection to your form of
20 interrogation.

21 MS. WIVELL: I object to your violation of
22 the court's order, your repeated violation.

23 MR. FLYNN: There's not a piece of coaching
24 in this whole dialogue. But go ahead.

25 That's what the purpose of those rules are, so

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 you don't coach the witness, and I haven't coached
2 him one iota.

3 MS. WIVELL: And you're certainly doing a
4 fine job of obstructing the deposition.

5 MR. FLYNN: Well that's for the record to
6 reflect. Go ahead.

7 MS. WIVELL: Oh, it certainly will.

8 MR. FLYNN: Well you -- you do your
9 questioning.

10 BY MS. WIVELL:

11 Q. Now sir, when The Tobacco Institute made public
12 statements about the issue of smoking and health, it
13 intended those statements to be accurate; didn't it?

14 A. Yes.

15 Q. Did it intend those statements to be complete?

16 A. We couldn't possibly, I don't believe, hope to
17 be absolutely complete in every -- in every single
18 statement on every single issue. I don't think
19 that's possible.

20 Q. Okay. So you did not intend for the statements
21 you made to be complete; is that right?

22 A. We can't --

23 MR. FLYNN: Objection, it's argumentative.
24 That's not what he said.

25 A. I don't think we can reasonably expect -- be

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 expected to include every piece of information in a
2 statement about a controversial issue.

3 Q. But you did expect people who smoked in America
4 to believe what you said; right?

5 A. We wanted smokers and non-smokers to receive the
6 information and believe it. We couldn't make them
7 believe it, but we -- we certainly would prefer that
8 they did.

9 Q. And you intended -- and by "you" there I mean
10 The Tobacco Institute -- intended when it made public
11 statements about smoking and health for people to
12 believe them.

13 MR. FLYNN: It's repetitive.

14 A. We wanted, obviously, people to believe what we
15 were saying. I think the use of the word "intent" is
16 a bit more than we could reasonably expect to
17 accomplish because it implies, I think, more than we
18 as -- as The Tobacco Institute could get from the
19 American public.

20 Q. Well you would agree that it was reasonable for
21 people to believe what The Tobacco Institute said on
22 the issues of smoking and health.

23 A. No, I can't -- I can't agree to that, no.

24 Q. Why not?

25 A. Because I have no idea what is reasonable for

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the American public to accept or believe.

2 Q. But you were out there making statements with
3 the hope that people would act on them; weren't you?

4 A. No. Not act on them, no, ma'am.

5 Q. So The Tobacco Institute was out there making
6 public statements on the issue of smoking and health
7 and it did not intend the public to act on those
8 statements?

9 A. No, ma'am.

10 Q. Okay. But it did intend to fill in the blanks
11 that the government left; correct?

12 A. Yes. We thought we had a right to present our
13 views and opinions on controversial issues. Still do
14 today.

15 Q. All right. And sir, that right includes the
16 right to provide accurate information; doesn't it?

17 A. Well certainly.

18 Q. And it also includes the duty not to give out
19 misinformation; doesn't it?

20 MR. FLYNN: Objection, that's
21 argumentative.

22 A. Well I think you're going to have to tell me
23 what you mean by "misinformation."

24 Q. False information, sir.

25 A. We don't give out false information.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Never did. Never gave out any false
2 information; right?

3 A. We are accurate in what we say. We don't give
4 out false information.

5 Q. Never have, ever.

6 A. Well in my experience at the Tobacco Institute,
7 my experience has been we don't give out false
8 information.

9 Q. And speaking as The Tobacco Institute here
10 today, you can say unequivocally you've never given
11 out false information.

12 A. Oh, please. Now you know that's unreasonable.
13 I cannot say that for the 40 years of the existence
14 of The Tobacco Institute there might not
15 inadvertently have been some information given out
16 that was false. I'm telling you my experience over
17 the past 21 years is that we don't do that. I
18 certainly don't do that.

19 Q. Now sir, the public statements that are made by
20 The Tobacco Institute arose out of policies that were
21 set back in the '50s; isn't that true?

22 MR. FLYNN: Objection, that's vague and
23 ambiguous, overbroad.

24 A. I -- I don't believe I can fairly answer that --
25 that question.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Well sir, isn't it a fact that The Tobacco
2 Institute came into being as a public-relations
3 effort on the part of the major tobacco
4 manufacturers?

5 A. No, it's not, to the best of my knowledge.

6 Q. Well isn't it a fact that in 1953, as a result
7 of medical publications that gave rise to a concern
8 that smoking was related to cancer, that the heads of
9 the major tobacco companies got together to decide a
10 course of conduct for the tobacco companies?

11 MR. FLYNN: Objection, it's so vague, broad
12 and ambiguous.

13 A. Well 1953 was five years before the formation of
14 The Tobacco Institute, and I certainly wasn't in any
15 position to be around at the Institute or the
16 industry at that time.

17 Q. But you have reviewed documents concerning that,
18 which I provided in preparation for this deposition;
19 haven't you, sir?

20 A. I reviewed some of the documents. I couldn't
21 possibly review everything.

22 (Plaintiffs' Exhibit 397 was marked
23 for identification.)

24 BY MS. WIVELL:

25 Q. Sir, showing you what's been marked as

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Plaintiffs' Exhibit 397, this is a document that's

2 Bates numbered JH000502; correct?

3 A. Yes, ma'am.

4 Q. All right. And it's a document that's dated

5 December 15th, 1953, and concerns background material

6 on the cigarette industry client; right?

7 A. That's what it says.

8 Q. And it concerns a meeting at the Hotel Plaza

9 from the president -- of the presidents of the

10 leading tobacco companies; right?

11 MR. FLYNN: Objection, it's overbroad. The

12 document speaks for itself. If you want him to

13 answer that, he's got to have a chance to read it to

14 affirm your description of it.

15 A. I have never seen this document before.

16 Q. All right. Sir, why don't you direct your

17 attention to the first --

18 No one showed you this document before, despite

19 the fact I provided it to counsel?

20 MR. FLYNN: Counsel tells us it was not

21 predesignated.

22 MS. WIVELL: It was predesignated, and I

23 copied it myself and made sure it got to the office

24 of your counsel.

25 BY MS. WIVELL:

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Sir, why don't you take a moment and look at the
2 first paragraph and the fourth paragraph of the first
3 page.

4 MR. FLYNN: Well just before --
5 We need to determine that this was
6 predesignated.

7 MS. WIVELL: It was predesignated, sir.

8 MR. DAVIES: I haven't seen it.

9 MS. WIVELL: Let's go off the record.

10 THE REPORTER: Off the record, please.

11 (Discussion off the record.)

12 MR. FLYNN: The record should reflect that
13 this is a document that was served in my office in
14 Minneapolis at 4:00 o'clock on Friday. The witness
15 has never had the opportunity to review any of those
16 documents that were designated Friday afternoon given
17 he's in Washington. And the volume of documents
18 produced, we advised counsel we would object to the
19 use of these documents as both excessive in terms of
20 supplemental designation and late in terms of time
21 for disclosure, and we advised her of that
22 yesterday. We object to the use of this document.

23 Having said that, I don't mean to be
24 obstreperous. If there are two or three documents
25 that you particularly want to add to this and we'll

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 have the witness take the time to look at them, we're
2 willing to accommodate that. But to serve an
3 in-excess-of-65-document list basically the business
4 day before this takes place when you know the witness
5 is in Washington, not Minneapolis, and you serve him
6 in Minneapolis, is just unreasonable. So if you want
7 to --

8 With this document, if you want the witness to
9 take the time to review it, we'll allow examination.
10 But I ask that you select a few of these because
11 we're not going to allow wholesale examination on
12 this substantial supplemental presentation, untimely
13 made.

14 MS. WIVELL: All right. For the record, I
15 would just like the record to reflect that the
16 supplementation was made in a timely fashion pursuant
17 to the court's order, in the same timely fashion that
18 we have made our supplementations for other
19 defendants. The number is not excessive. I note
20 that the defendants have over and over again provided
21 supplemental designations in an untimely fashion,
22 including one for over 1500 pages, that were served
23 the day of the deposition. But I didn't do that.

24 I have a reasonable number of documents that
25 were provided. As a matter of fact, hard copies of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 those documents which I intended to use which were
2 not Tobacco Institute documents were provided in a
3 timely fashion as required by the court order. And
4 I'd be more than happy to go off the record and allow
5 the witness to review the document.

6 I'm not sure that there are going to be many.
7 There are going to be some. So why don't we proceed
8 in that fashion.

9 MR. FLYNN: That's -- we'll --
10 We'll agree to that.

11 THE REPORTER: Off the record, please.

12 (Discussion off the record.)

13 (Plaintiffs' Exhibit 398 was marked
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, turning your attention to Exhibit 397, it
17 concerns a meeting that was held by the presidents of
18 the leading tobacco companies at the Plaza Hotel on
19 December 15th, 1953; doesn't it?

20 MR. FLYNN: Objection, speaks for itself.

21 A. That's -- that's what it apparently says. I
22 don't know if it's accurate or not.

23 Q. Okay.

24 A. I don't know who wrote it, where it's from.

25 Doesn't say.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. But that's what it says; doesn't it, sir?

2 A. That's what it says.

3 Q. All right. And did you understand that such a
4 meeting did take place that eventually resulted in
5 the formation of what was originally known as the
6 TIRC, The Tobacco Institute Research Committee?

7 MR. FLYNN: Objection, it's a compound
8 question.

9 A. I don't know how The Tobacco Institute Research
10 Committee was formed.

11 Q. All right. Well The Tobacco Institute Research
12 Committee became CTR eventually; didn't it, The
13 Council for Tobacco Research?

14 A. I believe so. That's considerably before I was
15 ever involved with the tobacco industry.

16 Q. All right. But according to this document, the
17 group was called together and agreed to go along with
18 the public-relations program on health issues;
19 correct?

20 MR. FLYNN: Objection, speaks for itself.

21 A. Assuming it's, you know, it's an accurate
22 representation of what occurred at the meeting,
23 apparently they discussed how the industry should
24 begin to respond to smoking-and-health issues.

25 Q. And in fact it refers to the -- to them going on

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 a public-relations campaign; doesn't it?

2 A. Where does it say that?

3 Q. Page two. Do you see under "The Industry's
4 Position," the fourth paragraph, it says, "They feel
5 they should sponsor a public relations campaign which
6 is positive in nature and is -- and is entirely 'pro-
7 cigarettes'?"

8 A. Yes, I see that.

9 Q. Okay. Now sir, did you understand that before
10 The Tobacco Institute was formed, that CTR provided
11 the function of being a public-relations arm of the
12 tobacco companies?

13 A. No, I did not.

14 Q. Sir, would you turn to Exhibit 398.

15 A. All right.

16 Q. You have it in front of you?

17 A. Yes.

18 Q. That is a document Bates numbered HK0039151 as
19 its beginning Bates number?

20 A. Yes, that's right.

21 Q. Now --

22 MR. FLYNN: For the record, this is another
23 one of these late disclosures, but go ahead.

24 MS. WIVELL: It is not a late disclosure.

25 MR. FLYNN: Well supplemental then, without

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 arguing with you.

2 Q. Sir, this document is dated April 4th -- I'm

3 sorry, strike that.

4 This document is dated April 9th, 1962 and

5 concerns the TIRC program; right?

6 MR. FLYNN: Objection. Again it speaks for

7 itself, but --

8 A. The subject says "TIRC Program." I don't know

9 if it's meant to be all inclusive.

10 Q. But that's what it says; doesn't it?

11 A. It does say "TIRC Program."

12 Q. Okay. And you understand that TIRC refers to

13 the first name that was given to CTR?

14 A. I don't know if it can be fairly said that they

15 were one and the same. I'm not that familiar with

16 those two organizations. But The Tobacco Institute

17 Research Committee was established in the 1950s by

18 the -- by the industry.

19 Q. All right. And one of its purposes was to solve

20 the public-relations problem that the industry

21 perceived for itself; isn't that true?

22 A. I don't know that to be true, no.

23 Q. Well it does say here, "Historically, it would

24 be -- it would be" -- I'm sorry. Strike that.

25 It does say here, "Historically, it would seem

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that the 1954 emergency was handled effectively."

2 Have I read the first sentence of the second

3 paragraph correctly?

4 A. Yes, you have.

5 Q. And it goes on to say, "From this experience

6 there arose a realization by the tobacco industry of

7 a public relations problem that must be solved for

8 the self-preservation of the industry;" correct?

9 A. That's what it says.

10 Q. And isn't it true that The Tobacco Institute

11 eventually was formed because of this realization

12 that The Tobacco Institute had a public-relations

13 problem that must be solved for its

14 self-preservation?

15 MR. FLYNN: Objection. Objection, it's

16 vague and convoluted. You got "Institute" in there

17 twice.

18 MS. WIVELL: All right. Let me rephrase

19 the question.

20 Q. Isn't it true that The Tobacco Institute

21 eventually was formed because of the realization by

22 the tobacco industry that it had a public-relations

23 problem that must be solved for its preservation?

24 A. I don't know that to be the case, no.

25 Q. Well sir, in your investigation of the issues of

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the public statements on smoking and health that you
2 were designated for for this deposition, did you see
3 documents which were related to that subject?

4 MR. FLYNN: Which subject?

5 Vague and ambiguous as phrased. If you know
6 what she's talking about, answer her.

7 A. If you could clarify which subject, I'd
8 appreciate it.

9 MS. WIVELL: I object to the coaching.

10 Q. Sir, isn't it true that in your preparation for
11 this deposition today, you saw documents that
12 indicate that The Tobacco Institute was formed by the
13 tobacco industry in order to solve its public-
14 relations problem?

15 A. If you're asking did I see documents that said
16 that, no, I did not.

17 Q. All right. Well you know that to be a fact;
18 don't you?

19 A. I do not.

20 Q. You do not know that The Tobacco Institute was
21 formed to -- so that the tobacco industry could go on
22 the offensive?

23 MR. FLYNN: Objection, it's argumentative.

24 A. Completely different from what you said a moment
25 ago.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. All right. Well let me ask you that question.

2 Isn't it true that The Tobacco Institute was formed
3 by the tobacco industry so that the tobacco industry
4 could go on the offensive?

5 A. I don't know that to be the case either.

6 (Plaintiffs' Exhibit 399 was marked
7 for identification.)

8 MR. FLYNN: Just a moment.

9 BY MS. WIVELL:

10 Q. Sir, showing you what's been marked as Exhibit
11 399, this is a document Bates numbered MNAT00724279;
12 correct?

13 A. That is the number, yes.

14 Q. It's dated July 30th, 1957; right?

15 A. It is.

16 Q. And it's a letter from Paul Hahn -- I'm sorry.

17 It's a letter to Paul Hahn, the president of
18 American Tobacco Company; isn't it, sir?

19 A. It is.

20 Q. All right. And it refers to the fact that TIRC
21 has been a successful defensive operation; doesn't
22 it?

23 MR. FLYNN: Again I object.

24 A. Well --

25 MR. FLYNN: It speaks for itself.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I think in all fairness you're going to have to
2 give me an opportunity to look at this, because I
3 haven't seen it before.

4 Q. Sir, I predesignated this exhibit, and your
5 counsel didn't show it to you; is that right?

6 MR. FLYNN: Counsel, there's no way we
7 could show him all the stuff you predesignated. He
8 said he didn't look at every one and there's no way
9 in the world he could have looked at every one with
10 the time we had.

11 MS. WIVELL: All right. Then let's go off
12 the record.

13 THE REPORTER: Off the record, please.

14 (Discussion off the record.)

15 BY MS. WIVELL:

16 Q. Sir, you've had the opportunity to review
17 Exhibit 399?

18 A. That's correct, yes.

19 Q. Now this is a letter from E. A. Daar, president
20 of R. J. Reynolds Tobacco Company, to the president
21 of American Tobacco.

22 A. That's what it says.

23 Q. All right. And he talks here about the tobacco
24 industry having to go on the offensive in bringing
25 the truth about cigarette smoking to the public;

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 doesn't he?

2 MR. FLYNN: I object. The document speaks
3 for itself.

4 A. Yes, that's one of the things he says.

5 Q. All right. And as a matter of fact, it was the
6 perception of the tobacco industry at this time that
7 it needed an organization to go on the offensive and
8 bring information about cigarette smoking to the
9 public.

10 MR. FLYNN: Objection, there's no
11 foundation, the document speaks for itself.

12 A. I've got no idea what the entire industry may
13 have been thinking 40 years ago.

14 Q. Well at least that is what it says here in this
15 letter; right?

16 MR. FLYNN: I object, it speaks for itself.

17 A. If that's this gentlemen's opinion, then that's
18 his opinion. I don't know that he was speaking for
19 anyone but himself.

20 Q. Well sir, did you go back and look at the early
21 public statements that were made by the tobacco
22 industry in preparation for your deposition today?

23 A. I did not.

24 Q. You did not. All right.

25 Did you go back and look at the documents that I

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 provided concerning the formation of The Tobacco
2 Institute?

3 A. Well there were so darn many documents that I
4 tried to look at. I may honestly have seen them, I
5 don't recall.

6 Q. All right. But at least, according to this
7 document, the president of R. J. Reynolds was
8 convinced that there was a need for an organization
9 of tobacco manufacturers formed for the narrow and
10 well-defined purpose of presenting facts and
11 information helpful to the industry; right?

12 MR. FLYNN: Object, the document speaks for
13 itself.

14 A. Well that -- that's part of what he says, yes.

15 Q. And as a matter of fact, the next -- the very
16 next year The Tobacco Institute was formed; wasn't
17 it?

18 A. The Tobacco Institute was formed in 1958.

19 Q. And one of the specific functions of The Tobacco
20 Institute was to collect and disseminate scientific
21 and medical information relating to tobacco.

22 A. I honestly do not recall if that was in our
23 original mission statement.

24 Q. Well The Tobacco Institute was formed to
25 disseminate information concerning tobacco and

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoking-and-health issues; wasn't it?

2 A. Not solely.

3 Q. Not solely. But that was one of the purposes;
4 wasn't it?

5 A. As I said, I do not know what the original
6 mission statement of the Institute read.

7 (Plaintiffs' Exhibit 400 was marked
8 for identification.)

9 BY MS. WIVELL:

10 Q. Sir, showing you what's been marked as
11 Plaintiffs' Exhibit 400, this is a Tobacco Institute
12 document entitled "SMOKING/HEALTH, An Age-Old
13 Controversy;" correct?

14 A. Yes, it is.

15 Q. It's Bates numbered -- I'm sorry. The first
16 Bates number is TIMN395418; right?

17 A. Correct.

18 Q. This is a publication put out to the public by
19 The Tobacco Institute; correct?

20 A. I don't know that to be the case, no.

21 Q. Could you turn to the last page. Do you see The
22 Tobacco Institute logo at the bottom?

23 A. Yes.

24 Q. All right. And it says there "The Tobacco
25 Institute" and then gives the address; correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes, it does.

2 Q. That would lead you to believe that this was a
3 Tobacco Institute publication; wouldn't it, sir?

4 A. It is a Tobacco Institute publication, yes.

5 Q. And as a matter of fact, in the box directly
6 above the logo there is a statement that "The facts
7 and statements in this document are presented by the
8 Tobacco Institute in the belief that the many
9 controversial questions concerning smoking and health
10 must ultimately be answered by further scientific
11 research and new knowledge -- and that the full, free
12 and informed public discussion is essential in public
13 interest;" correct?

14 A. Correct.

15 Q. And it is The Tobacco Institute's belief that
16 the full, free and informed public discussion
17 concerning smoking and health is in the public
18 interest; isn't it, sir?

19 A. That's correct.

20 Q. All right. Now if you turn to the second page
21 of the document under the paragraph "Need to
22 Communicate," do you see there the statement that,
23 "In 1958 The Tobacco Institute was formed by
24 cigarette, smoking tobacco, chewing tobacco and snuff
25 manufacturers to deal with general public problems of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the industry?"

2 A. Yes, I do.

3 Q. And it goes on to say, "One of the specified
4 functions of The Tobacco Institute was to collect and
5 disseminate scientific and medical information
6 relating to tobacco, and this has continued to be
7 done, in a variety of ways, in the years since."
8 Have I read it correctly?

9 MR. FLYNN: No. "Various ways."

10 Q. All right. Let me rephrase the question.

11 Then it goes on to say, "One of the specified
12 functions of The Tobacco Institute was to collect and
13 disseminate scientific and medical information
14 relating to tobacco, and this has continued to be
15 done, in various ways, in the years since."

16 A. That is correct.

17 Q. All right. And you understand that that is one
18 of the functions of The Tobacco Institute, to collect
19 and disseminate scientific and medical information
20 relating to tobacco.

21 A. Well it certainly has been. I don't know that I
22 could say that presently we do that.

23 Q. Okay. But it has been during most of the time
24 you've been with The Tobacco Institute; isn't that
25 right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: Object as vague and ambiguous.

2 A. I couldn't say.

3 Q. When did The Tobacco Institute stop

4 disseminating information about tobacco?

5 MR. FLYNN: That's argumentative. That's

6 not what he said, but --

7 A. Well we -- we haven't stopped disseminating

8 information about tobacco.

9 Q. So The Tobacco Institute still collects and

10 disseminates scientific and medical information

11 relating to tobacco; is that right?

12 MR. FLYNN: That's a different question.

13 A. It is quite different I'm afraid.

14 We do distribute information about tobacco

15 issues. I don't recall the last time we prepared and

16 distributed a publication on smoking and health, for

17 example.

18 Q. But when the press calls and asks questions

19 about smoking-and-health-related issues, you still

20 disseminate information; don't you, sir?

21 A. We will answer questions, many times, about

22 smoking-and-health information. Not all the time.

23 Q. All right.

24 A. For example, if I haven't seen a study, I'm not

25 going to answer a question about it.

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. But you still are the point person very often
2 when people from the press call and ask questions
3 about smoking-and-health-related issues; aren't you,
4 sir?

5 A. If their questions are ones that I feel capable
6 of answering, I'll try to present information to
7 them. I can't always do that.

8 Q. Keeping in mind the limitations you just placed,
9 though, it's fair to say that you still, on behalf of
10 The Tobacco Institute, disseminate information you
11 know about concerning scientific and medical facts
12 relating to tobacco; isn't that true?

13 A. With certain limitations, yes.

14 Q. And indeed, you would agree that The Tobacco
15 Institute was formed by the tobacco industry in order
16 to disseminate this information.

17 MR. FLYNN: Objection, that's
18 argumentative, vague, overbroad. What information?

19 A. I certainly couldn't agree -- excuse me. I
20 certainly couldn't agree that the tobacco industry
21 formed The Tobacco Institute for that only
22 specification purpose.

23 Q. Well sir, doesn't it say that in the -- on
24 Exhibit 400, right under the head of the document?
25 Right under the title, doesn't it say, "This article,

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 reviewing the development of the smoking-health
2 controversy and outlining the current state of the
3 issue has been prepared by The Tobacco Institute, an
4 organization formed by members of the tobacco
5 industry in 1958 to disseminate information?"

6 A. To disseminate information, not only smoking and
7 health information.

8 MS. WIVELL: I need to take a break.

9 THE REPORTER: Off the record, please.

10 (Recess taken.)

11 BY MS. WIVELL:

12 Q. Sir, going back to Exhibit 400, The Tobacco
13 Institute publication entitled "SMOKING/HEALTH, An
14 Age-Old Controversy," when The Tobacco Institute put
15 out publications like this, it made them available
16 for the public; right?

17 A. I don't know what use was made of this. It's
18 dated 1971 apparently, which would have been five
19 years before I got to the Institute. I don't know if
20 this was distributed, and if so, how.

21 Q. Well that's why I said "publications such as
22 this".

23 Publications like this one were one means that
24 The Tobacco Institute utilized to get ideas and
25 information across concerning smoking and health;

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 right?

2 A. Well I don't know if this one was used in that
3 way. Is your question does The Tobacco Institute use
4 publications? "Yes" is the answer.

5 Q. And sir, when The Tobacco Institute uses
6 publications, it intends for people to rely on them;
7 doesn't it?

8 MR. FLYNN: Objection, repetitive, but go
9 ahead again.

10 A. Well if you'll tell me what you mean by "rely,"
11 perhaps we can agree, but I don't know what you mean
12 by -- by the use of that word.

13 Q. Okay. Well I went and looked it up in the
14 dictionary, and it says here from Webster's Third
15 World Dictionary, rely means to have confidence,
16 trust, to look upon, to support or aid, depend. So
17 let me break it down.

18 MR. FLYNN: Is that all of it?

19 MS. WIVELL: No. There are synonyms, too.

20 Q. But let me break it down. When The Tobacco
21 Institute used publications concerning smoking and
22 health, did it intend the reader to have confidence
23 in what was said in the publication?

24 A. I believe, as we have already agreed earlier in
25 this deposition, The Tobacco Institute hoped that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 what we said would be believed by those who heard it
2 or read it. I believe that's an accurate statement
3 of what we hoped would be the case.

4 Q. All right. But my --

5 A. I'm not willing to go beyond that.

6 Q. -- questions --

7 Well let me ask this again, because my question
8 is a little bit different. Isn't it true that The
9 Tobacco Institute, when it used publications to talk
10 about smoking and health, intended the reader to have
11 confidence in what was written there?

12 MR. FLYNN: Objection, it's repetitive,
13 vague, into semantics. But answer if you can.

14 A. I'm comfortable with the answer I already
15 provided you, and I -- I don't think that I can be
16 any more specific.

17 Q. So, sir, you can't tell us as you sit here today
18 whether or not The Tobacco Institute intended the
19 reader of its -- the readers of its publications to
20 have confidence in what was written in those
21 publications?

22 MR. FLYNN: Objection, argumentative and
23 repetitive.

24 A. I can tell you that we hoped people would
25 believe what we said, and I think that is sufficient.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Well sir, my question is a little different.

2 I'm going to move to strike your answer as

3 non-responsive.

4 So it's true, as you sit here today, you can't

5 tell us one way or the other whether The Tobacco

6 Institute wanted the people who read its publications

7 to have confidence in what was written there?

8 MR. FLYNN: Same objection.

9 A. I can tell you, as I've said before, that we

10 hoped people would believe what we said. If you want

11 to form conclusions based on that, you're welcome to,

12 but that's my answer to your question.

13 Q. Well let me ask another question then. One of

14 the definitions of "rely" here is to look at, to

15 support or aid, depend.

16 Let me ask this: Can you tell us as you sit

17 here today whether The Tobacco Institute intended the

18 people who received its publications to be able to

19 depend on them?

20 MR. FLYNN: Objection.

21 A. For what?

22 Q. For the truth.

23 A. The entire truth? That's hardly possible.

24 Q. Sir, are you telling us that you don't think

25 that readers of The Tobacco Institute publications

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 had a right to be able to depend on those
2 publications?

3 MR. FLYNN: Objection, it's argumentative.

4 You're just arguing with him. "Depend" --

5 A. It's not --

6 That's not what you asked me.

7 Q. Let me ask my question again.

8 Are you telling us you don't think that the
9 readers of The Tobacco Institute publications had a
10 right to be able to depend on those publications?

11 MR. FLYNN: You're just arguing with him.
12 It's repetitive and argumentative.

13 MS. WIVELL: And again I object to your
14 violation of the court's order.

15 MR. FLYNN: There's no violation. But go
16 ahead. I mean at some point --

17 Well go ahead, answer it again. At some point
18 this has to stop.

19 A. Depend for what, on what?

20 Q. Well, could the reader who read a Tobacco
21 Institute publication on smoking and health depend on
22 the information to be true?

23 A. It's accurate, it's true, certainly.

24 Q. Okay. And that's what The Tobacco Institute
25 intended when it made the publications on the issues

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of smoking and health; right?

2 A. We intend for our information to be accurate,
3 people to believe it. We'd like them to believe it.
4 We can't force them to.

5 Q. You'd like to think that they could depend on
6 what you said to be true, though.

7 MR. FLYNN: It's repetitive, it's
8 argumentative.

9 A. If you mean by "true" accurate, then I'll agree
10 with that.

11 Q. Okay. And it would be reasonable for a person
12 who was reading a publication from The Tobacco
13 Institute on the issues of smoking and health to be
14 able to believe that what he or she was reading was
15 true and accurate.

16 MR. FLYNN: Again it's repetitive and
17 argumentative. He's answered it.

18 A. I think that everything The Tobacco Institute
19 has presented in its publications is accurate. If
20 you mean by -- when --

21 When you say "accurate," if you are using as a
22 synonym for that "true," then that is correct.

23 Q. Well my question is: Would it be reasonable for
24 the average smoker who read this publication,
25 "SMOKING/HEALTH, An Age-Old Controversy," to be able

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 to rely on it?

2 A. One of the problems is I'm unable to tell you
3 what the average smoker, whoever that may be, would
4 get from reading any publication.

5 Q. But at least from The Tobacco Institute's
6 perspective, it put out these materials so the people
7 would be able to rely open it -- them; wouldn't --
8 didn't it?

9 MR. FLYNN: Objection.

10 A. The Tobacco Institute, if that's what you mean
11 by "it," certainly issued publications in the hope
12 and belief that people would -- would read them and
13 believe them. We have no idea what people would do
14 beyond that.

15 Q. So you can't say as you sit here today that The
16 Tobacco Institute intended people to rely on its
17 public statements on smoking and health.

18 MR. FLYNN: It's just argumentative. At
19 some point it has to stop being asked for the 10th to
20 15th time, order or no order. You've asked him the
21 same thing 15 times. You're just arguing with him.

22 A. My answer here to your question remains the
23 same. I -- I can't think of a reason to change it.

24 Q. Now sir, isn't it true that one of the purposes
25 of The Tobacco Institute would -- was to defend the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 tobacco industry against attacks from whatever
2 source?

3 A. I don't remember that being part of our charge.
4 That would be awfully broad and frankly, I think,
5 just about impossible.

6 Any -- any charge from anybody, any time,
7 anyplace, anywhere? I don't think that's possible.

8 Q. All right. Well let me rephrase the question a
9 little bit. Isn't it true that one of the major
10 objectives of The Tobacco Institute was to defend the
11 tobacco industry against attacks from whatever source
12 on the issue of health hazards related to smoking?

13 A. Again, I think that's too broad. I couldn't
14 agree that that was something we were instructed to
15 do.

16 (Plaintiffs' Exhibit 401 was marked
17 for identification.)

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been marked as
20 Plaintiffs' Exhibit 401, this is a document Bates
21 numbered JH000207 as the beginning Bates number;
22 correct?

23 MR. FLYNN: This is a supplementary-
24 produced document that the witness has had no
25 opportunity to see before.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That is the correct number.

2 Q. All right. And for the record, it's a letter
3 from the office of the president of The American
4 Tobacco Company to John W. Hill dated February 5th,
5 1958; correct?

6 A. That's what it says.

7 Q. And the signature at the end of the document is
8 that of Paul M. Hahn, president; right?

9 A. I -- I can't vouch for the signature.

10 Q. Okay. But Paul M. Hahn was president of The
11 American Tobacco Company in 1958; wasn't he?

12 A. I don't know.

13 Q. Sir, isn't it true that this document states
14 that one of the Institute's major areas of activity
15 and major objectives would be to defend the tobacco
16 industry against attacks from whatever source on
17 tobacco as an alleged health hazard?

18 MR. FLYNN: Objection. I don't know if
19 this is the third or fourth one of them, but you have
20 to let the witness read this thing if you're going to
21 examine him about it and discuss and paraphrase it.

22 So he's just going to have to take the time. If you
23 want to expedite this and focus him on a couple pages
24 that's the context, we don't have to sit here for --

25 MS. WIVELL: That's fine.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: -- half an hour while we labor
2 through a 10-page document. But he's got to get
3 enough of it. You got to give it to him to get the
4 context. It looks like you got three or four pages
5 colored.

6 MS. WIVELL: We can go off the record.

7 MR. FLYNN: All right.

8 THE REPORTER: Off the record, please.

9 (Discussion off the record.)

10 MR. FLYNN: Let the record reflect, just by
11 our count, this is the third so-called supplemental
12 document. It is our expectation these things are
13 read on the record and as part of the 20 hours. Now
14 if you get done with in less than 20, it's much ado
15 about nothing, but I want the record to reflect the
16 time that is being taken from the witness while he
17 reads these things, which is not being done at
18 present because when we go off the record the time
19 clock the reporter is maintaining is interrupted and
20 resumes when we go back on the record.

21 Now it's my view that this 20-hour calculation
22 runs from the commencement of this till the end of
23 the day, and if you want to use it to have the
24 witness read these things, that's your choice.

25 MS. WIVELL: Well Mr. Flynn, as you know, I

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 have provided you not only with the Bates numbers of
2 the documents, but also, with regard to the
3 non-Tobacco Institute documents, the actual documents
4 themselves in expectation that you would prepare your
5 witness. And having failed to show him these
6 documents, I don't believe it's appropriate for us to
7 use the time on the record.

8 MR. FLYNN: Well --

9 MS. WIVELL: But I'm perfectly willing to
10 try and direct his attention, as you suggested, to
11 portions so that we can move this deposition along.
12 But if he insists on reading the whole document, then
13 I believe it's only fair that we go off the record to
14 do that.

15 MR. FLYNN: Well I'll resolve --

16 Because I disagree. This is your doing as -- we
17 don't need to repeat it -- you got these documents to
18 us on Friday at 4:00 o'clock in Minneapolis. We got
19 them to Covington on Monday. And there's no
20 opportunity for the rest of the stuff you gave us,
21 but three days before, for the witness to read
22 another pile of this paper.

23 MS. WIVELL: Well --

24 MR. FLYNN: So again I -- I'm trying to
25 accommodate you by saying a reasonable number of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 these supplemental things can be used. The trouble
2 so far is at least half if not more than of the
3 documents identified are all from these supplemental
4 things. It's not -- it's starting to become
5 unreasonable.

6 MS. WIVELL: Well the supplemental thing is
7 allowed by the court.

8 MR. FLYNN: If it's done in a timely manner
9 it provides. And it's excessive in number.

10 MS. WIVELL: Well as I have stated on the
11 record, it was done in a timely fashion. And I
12 provided you with the actual hard copies of the
13 documents.

14 MR. FLYNN: Two days prior. You exclude a
15 day of service, which is Friday. Your next day is
16 Monday; the day after is today, Tuesday. That ain't
17 two days the way I counted it in second grade.

18 BY MS. WIVELL:

19 Q. Sir, you've had the opportunity to read Exhibit
20 401.

21 A. I have.

22 MR. FLYNN: Kindergarten. I could count in
23 kindergarten.

24 Q. And sir, this is written by the president of the
25 American Tobacco Company; right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Apparently. That's what it says.

2 Q. And at the time it was written, American Tobacco
3 was a member of The Tobacco Institute; wasn't it?

4 A. I don't know.

5 THE REPORTER: Let's go off the record,
6 please.

7 (Discussion off the record.)

8 BY MS. WIVELL:

9 Q. Sir, one of the statements made in Exhibit 401
10 concerns the objectives of The Tobacco Institute;
11 doesn't it?

12 MR. FLYNN: Again, it speaks for itself.

13 A. The writer gives his opinion of what the
14 activity and major objectives should be.

15 Q. All right. And according to the president of
16 The American Tobacco Company, the Institute's major
17 area of activity and major objective should be to
18 defend the tobacco industry against attacks from
19 whatever source on tobacco as an alleged health
20 hazard, including efforts to impose labeling
21 requirements of tobacco products based directly or
22 indirectly on the charge that tobacco is a hazard to
23 health; correct?

24 A. The writer says that is his opinion, yes.

25 Q. And sir, isn't it a fact that that was one of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the objectives of The Tobacco Institute, to defend
2 the tobacco industry against attacks from whatever
3 source on tobacco as an alleged health hazard?

4 A. I don't know that our mission statement
5 contained those exact words, no.

6 Q. Well sir, whether your mission statement
7 contained those exact words or not, isn't it a fact
8 that The Tobacco Institute, since its inception in
9 1958 -- I'm sorry, since its inception, has defended
10 the tobacco industry against attacks on tobacco as an
11 alleged health hazard?

12 MR. FLYNN: Object. It's a different
13 question. It's argumentative.

14 A. The Tobacco Institute has defended the industry,
15 but that's not what the writer of this letter says
16 specifically. They are two different things in my
17 view.

18 Q. Sir, I'm going to show you a copy of the
19 interrogatory answers that The Tobacco Institute has
20 filed in this case.

21 (Plaintiffs' Exhibit 402 was marked
22 for identification.)

23 MR. FLYNN: For the record, this is another
24 supplemental production document.

25 BY MS. WIVELL:

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Sir, directing your attention to the bottom of
2 page 14, do you see an interrogatory answer there
3 that asks the Tobacco Institute to identify by year
4 the member organizations of The Tobacco Institute?

5 A. Yes, I do.

6 Q. All right. And do you see that the first answer
7 is for the year 1959?

8 A. Yes, I do.

9 Q. Now The Tobacco Institute was formed in what
10 year?

11 A. 1958.

12 Q. All right. Did you understand that the
13 companies that were original members of The Tobacco
14 Institute in 1958 were also members in 1959?

15 A. I have no knowledge of that.

16 Q. All right. Well this interrogatory does
17 disclose that in 1959 the American Tobacco Company
18 was a member of The Tobacco Institute; right?

19 A. It does.

20 Q. All right. And that's the same American Tobacco
21 Company whose president wrote Exhibit 401; right?

22 A. Well that would call for some supposition on my
23 part. I don't know if that's the case.

24 Q. Well sir --

25 A. I suppose it is, but I don't -- you know, I

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 don't know that.

2 Q. Do you know of any other company named the
3 American Tobacco Company that was a member of The
4 Tobacco Institute at any time?

5 A. I do not. I'm only telling you the limit of my
6 knowledge.

7 Q. Sir, Exhibit 401, the letter that Mr. Hahn wrote
8 to John Hill at Hill & Knowlton, does concern The
9 Tobacco Institute; doesn't it?

10 MR. FLYNN: Objection, it speaks for
11 itself. It's also repetitive. But --

12 A. It -- it does deal with The Tobacco Institute,
13 yes.

14 Q. All right. And Mr. Hahn sets forth what he
15 believes the Institute's position should be on all
16 matters related to smoking and health in Exhibit 401;
17 doesn't he?

18 MR. FLYNN: Again, the document speaks for
19 itself. There's no way he can answer that question
20 that way.

21 A. Well in his opinion, he says, "Broadly speaking,
22 it is my view that the Institute's position on the
23 health charges against tobacco should be that in the
24 present state of scientific evidence these charges
25 are unfounded."

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And then he goes on at the page number four to
2 talk about what he believes the Institute's position
3 on all matters should be concerning the issue of
4 smoking and health and tobacco; doesn't he?

5 MR. FLYNN: Again, I object to the
6 paraphrasing of the document. It speaks for itself.
7 If you want to read it to him, that's fine; have him
8 affirm your reading of it.

9 Q. I'm looking at the paragraph immediately above
10 number eight.

11 A. The writer says, "The Institute's position on
12 all such matters should be that it has not been
13 proved that tobacco is a health hazard; that its use
14 is a universal pleasure and relaxation; that many
15 hundreds of thousands of people depend on it for
16 their livelihood; and that any step in the direction
17 of discouraging consumption of tobacco is unjustified
18 and harmful."

19 Q. Sir, isn't it your experience based on the years
20 that you've spent at The Tobacco Institute that the
21 Institute's position has been that it has not been
22 proven that tobacco is a health hazard?

23 MR. FLYNN: That has nothing to do with
24 this document. Just answer that question.

25 A. That's part of what The Tobacco Institute has

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 said.

2 Q. Now sir, isn't it true that the bulk of the
3 public-relations activity which is done by the
4 tobacco industry emanates from The Tobacco Institute?

5 A. I have no way of being able to answer that
6 question.

7 Q. Well sir, isn't it true that TI --

8 By the way, The Tobacco Institute is often
9 referred to as TI; isn't it?

10 A. Yes, it is.

11 Q. Okay. Can we agree that when we talk about TI
12 that we're referring to The Tobacco Institute?

13 A. Absent other circumstances I can't conceive of,
14 yes.

15 Q. Okay. Now isn't it true that when The Tobacco
16 Institute acts as the official spokesman for the
17 tobacco industry, it always reflects the official
18 strategic positions agreed upon by its members?

19 MR. FLYNN: I object as vague and ambiguous
20 and overbroad.

21 A. I don't think I can agree that -- to that
22 specific wording, no.

23 Q. Well isn't it true that -- no, strike that.

24 (Plaintiffs' Exhibit 403 was marked
25 for identification.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 403, this is a document Bates
4 numbered 690020605; correct?

5 A. That's correct.

6 Q. And it is entitled "STATUS REPORT AND UPDATE,
7 PUBLIC RELATIONS STRATEGY OF THE U.S. TOBACCO
8 MANUFACTURERS RE SMOKING & HEALTH CONTROVERSY."
9 Right?

10 A. Correct.

11 Q. Now this document sets forth information
12 concerning The Tobacco Institute; doesn't it?

13 A. I -- I don't know. Does it?

14 Q. All right. Would you turn to the third page of
15 the document and read to yourself the first two
16 complete paragraphs.

17 A. Page three?

18 Q. Yes, the one that ends with Bates number 607.

19 A. Oh. That's page two then.

20 Q. The third page of the document.

21 MR. FLYNN: Do you want him to read, what,
22 the first --

23 THE WITNESS: First two complete
24 paragraphs?

25 MS. WIVELL: Yes, sir.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 THE WITNESS: Is that --

2 A. All right.

3 Q. Now sir, do you see there the statement that,
4 "As a representative of member manufacturers, the
5 Institute acts as official spokesman for the
6 industry, always reflecting official strategy
7 positions agreed upon by all members?"

8 A. I see that sentence, yes.

9 Q. Sir, and isn't it true that in fact when the
10 tobacco industry speaks officially on the subject of
11 smoking and health, it always does reflect the
12 official strategy positions agreed upon by all its
13 members?

14 A. I don't know that to be the case.

15 Q. Hasn't it been your experience -- no, strike
16 that.

17 Goes on here to say that "Essentially, the
18 official position still recognizes that the evidence
19 against cigarettes is inadequate to establish a
20 cause-and-effect relationship between smoking and
21 health." Have I read it correctly?

22 A. You have.

23 Q. Now sir, isn't it true that the official
24 position of The Tobacco Institute has been, since you
25 joined the Institute, that there is inadequate

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 evidence to support a cause-and-effect relationship
2 between smoking and health?

3 MR. FLYNN: I object, it's argumentative,
4 vague and ambiguous.

5 A. The Tobacco Institute's position has been, yes,
6 that we don't believe a causal relationship has been
7 established.

8 Q. And as a matter of fact you've used a variety of
9 different kinds of methods to disseminate that
10 message to the public; haven't you?

11 MR. FLYNN: Objection, it's argumentative
12 and vague. I don't know what you mean.

13 A. I'm not sure what you mean. We have
14 disseminated that message, among many others, but I
15 don't know how many different types of methods we may
16 have used.

17 Q. All right. Well The Tobacco Institute has
18 utilized letters to the editor to address the issue
19 of smoking and health?

20 A. We've occasionally written letters to the
21 editors of newspapers on a variety of subjects, yes.

22 Q. And The Tobacco Institute created a bi-monthly
23 newsletter that it utilized to provide information on
24 the lack of cause-and-effect relationship between
25 tobacco and smoking-and-health issues?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That was not the sole reason for the existence
2 of any publication --

3 Q. All right.

4 A. -- or newsletter.

5 Q. But isn't it true that The Tobacco Institute had
6 a newsletter whose purpose was, among other things,
7 to stress the controversy?

8 A. Perhaps you could be more specific about just
9 exactly what publication, as I gather it, you're
10 referring to.

11 Q. Well The Tobacco Institute had a bi-monthly
12 newsletter; didn't it?

13 A. Well there's some confusion here because you may
14 be speaking about something in specific. We have had
15 a lot of different kinds of publications, some of
16 them going out to the public and others not.

17 Q. All right.

18 A. If you tell me what you're talking about, maybe
19 we can --

20 Q. Let's talk the ones that went out to the
21 public. The tobacco industry has had newsletters
22 that went out to the public on -- that contained
23 information about smoking-and-health-related issues;
24 right?

25 A. Well that contained --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Well yes, that's right. Yes.

2 Q. And in fact it was called Tobacco and Health

3 Research at one time; wasn't it?

4 A. If so, it was before my time.

5 Q. You don't recall any publication regarding

6 Tobacco and Health Research, a publication with that

7 name?

8 A. I didn't say that. I believe I do, but I'm

9 relatively certain that it wasn't published after I

10 got to the Institute.

11 Q. All right. But it was published by the

12 Institute and had as its audience doctors and

13 scientists and the news media.

14 A. I don't recall any specifics about it. I -- I'm

15 not even certain I've ever seen an issue.

16 Q. Well sir, isn't it a fact that The Tobacco

17 Institute published this newsletter stressing that

18 the most important kind of story it could carry was

19 one that cast doubt on the theory of disease and

20 smoking?

21 MR. FLYNN: Objection, it's argumentative,

22 there's no foundation.

23 A. I don't know. That's not something that's

24 familiar to me.

25 Q. Well isn't it true that the tobacco industry --

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 I'm sorry, strike that.

2 Isn't it true that The Tobacco Institute has had
3 written policies that its publications were to stress
4 the type of story which cast doubt on the
5 cause-and-effect relationship between disease and
6 smoking?

7 A. I don't know.

8 (Plaintiffs' Exhibit 404 was marked
9 for identification.)

10 Q. Sir, showing you what's been marked as
11 Plaintiffs' Exhibit 404, this is a document Bates
12 numbered TIMN0071488 as a beginning Bates number;
13 correct?

14 A. Correct.

15 Q. And it is a memorandum to William Kloepper, Jr.
16 of The Tobacco Institute; right?

17 A. Correct.

18 Q. It's dated October 18th, 1968.

19 A. It is.

20 Q. Who was William Kloepper?

21 A. He was vice-president for public relations at
22 The Tobacco Institute.

23 Q. The subject of this memo is "Tobacco and Health
24 Research Procedural Memo;" right?

25 A. Yes, it is.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now the document concerned the writing and
2 production of a newsletter called Tobacco and Health
3 Research.

4 A. Well --

5 MR. FLYNN: I would object, it speaks for
6 itself. It's a four-page document. Do you want to
7 read the sentence to expedite this?

8 A. It may. I'm not familiar with this document, I
9 don't believe.

10 Q. Could you look at the first paragraph of the
11 document.

12 A. All right.

13 Q. That paragraph addresses the fact that this memo
14 is written concerning the writing and production of
15 Tobacco and Health Research; correct?

16 A. Yes.

17 Q. And it goes on, then, to address the primary
18 audience for that Tobacco Institute publication;
19 doesn't it?

20 MR. FLYNN: Again, the document speaks for
21 itself. It would be so much easier to read it,
22 but --

23 A. It says, "The primary audience is comprised of
24 doctors and scientists."

25 Q. And then it goes on to say that there's a

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 secondary audience, which is the news media.

2 A. Correct.

3 Q. Now would you turn to the top of page two.

4 There it says, "The most important type of story is
5 that which casts down on the cause and effect theory
6 of disease and smoking;" correct?

7 A. Correct.

8 Q. And isn't it true that in all of The Tobacco
9 Institute's publications relating to the issue of
10 smoking and health, that they were designed to cast
11 doubt on the cause-and-effect theory of disease and
12 smoking?

13 MR. FLYNN: Object.

14 A. No.

15 Q. Well at least this one was; right?

16 A. This writer said that that was his opinion.

17 Q. And --

18 A. Whether or not this was ever carried forth is
19 something I cannot know.

20 Q. All right. This writer was a member of the firm
21 of Hill & Knowlton, which was a -- an organization
22 which was hired to do public relations for the
23 tobacco industry; wasn't it?

24 A. I have no personal knowledge of that.

25 Q. You have no personal knowledge at all of the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 relationship of Hill & Knowlton, Inc. to the tobacco
2 industry?

3 A. What relationship Hill & Knowlton may or may not
4 have had with the tobacco industry or The Tobacco
5 Institute substantially predates my association with
6 the Institute.

7 Q. Did you find out when you were investigating or
8 preparing for this deposition about the relationship
9 of the tobacco industry and Hill & Knowlton?

10 A. I did not.

11 Q. Sir, if look down the page under "Headlines," do
12 you see where it says --

13 MR. FLYNN: What page are you on, please?

14 MS. WIVELL: I'm sorry. The page that ends
15 with Bates number 489.

16 MR. FLYNN: Oh.

17 Q. Do you see there the paragraph "Headlines?"

18 A. Yes.

19 Q. And does the last sentence read, "Thus, the
20 headline should strongly call out the point --
21 Controversy! Contradiction! Other factors!
22 Unknowns!"

23 A. That -- that's what it says, preceded by the
24 caution that these should be written very carefully.

25 Q. All right. But isn't it a fact that the written

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 public statement that The Tobacco Institute provided
2 on the issues of smoking and health focused on
3 controversy, contradiction and unknowns?

4 MR. FLYNN: Objection, it's argumentative,
5 extrapolates from this document to a general
6 proposition.

7 A. I can't speak for every Tobacco Institute
8 document, no.

9 Q. Well --

10 A. It's not possible for me to do.

11 Q. Let's talk generally based on your review and
12 preparation for this deposition. Isn't it true that
13 the documents you saw, the public statements on the
14 issue of smoking and health basically stressed
15 controversy, contradiction and unknowns?

16 MR. FLYNN: Objection, it's argumentative.
17 It's so overbroad it's impossible to answer.

18 A. I cannot generalize to that degree.

19 Q. Well sir, isn't it a fact that the public
20 statements on the issue of smoking and health
21 generally that you are familiar with stress the fact
22 that smoking and health are unrelated?

23 MR. FLYNN: Objection, it's argumentative.

24 A. That --

25 MR. FLYNN: It's overbroad.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. To the best of my ability to recall, that simply
2 is not true.

3 Q. Well sir, isn't it a fact that the majority of
4 the public statements on the issue of smoking and
5 health are aimed at demonstrating that there is no
6 causation between smoking and disease?

7 A. I don't know of anyone who's attempted to make a
8 numerical comparison of what points may be -- may
9 have made -- may have been made in Tobacco Institute
10 documents. I mean that's just not possible for me to
11 answer.

12 Q. Well sir, I'm not asking you for a numerical
13 comparison.

14 A. You asked me for a majority. What more could I
15 take from that?

16 Q. Well have you reviewed public statements from
17 the tobacco industry in preparation for this
18 deposition today?

19 A. I have reviewed some of the documents that you
20 told us you were interested in going over in this
21 deposition. Obviously, I haven't been able to read
22 them all.

23 Q. And isn't it fair to say that the general theme
24 that runs throughout them is that it's impossible to
25 establish a cause-and-effect relationship between

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoking and disease?

2 A. No.

3 MR. FLYNN: Objection.

4 Q. Sir, isn't it true that the majority of those
5 documents have as their theme the -- that there is
6 doubt to be cast on the cause-and-effect theory of
7 disease and smoking?

8 MR. FLYNN: Objection. He's answered it
9 already. Numerically, majority. It's repetitive.

10 A. I can't speak to what the majority of the
11 documents say, no, ma'am.

12 Q. Well sir, there were other techniques that were
13 used by The Tobacco Institute to make public
14 statements on the issue of smoking and health;
15 weren't there?

16 MR. FLYNN: That's argumentative.

17 A. Well if -- if you mean by that that I'm supposed
18 to accept that what you've said before is true, then
19 I cannot.

20 Q. Well we've talked about letters to the editor,
21 we've talked about newsletters. Now The Tobacco
22 Institute also tried to get feature articles placed
23 in newspapers throughout the country on the issue of
24 smoking and health; isn't that right?

25 MR. FLYNN: I object. That's an improper

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 form of question because you ask him to accept facts
2 you assert and then add a question at the end. As
3 phrased, it can't be answered.

4 Q. Well sir, --

5 MR. FLYNN: It's --

6 Q. -- would you turn to page 403 -- or to Exhibit
7 403. Do you have it?

8 A. 403, yes.

9 Q. Yeah. Could you turn to the page that's Bates
10 numbered ending 608.

11 A. All right.

12 Q. There does the third paragraph begin, "The
13 Institute's role, then, is primarily reactionary and
14 its communications programs are designed, for the
15 most part, to counteract, or dispute,
16 misunderstandings that are commonly held by the
17 general public or inaccuracies published in the
18 consumer press?"

19 A. That's the opinion of an anonymous writer.

20 Q. All right. And sir, isn't that a fact that that
21 was the Institute's role, was to contradict, dispute
22 understandings that were commonly held by the public
23 concerning smoking and health?

24 A. No, I wouldn't put it that way.

25 Q. You would disagree with this document then;

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 right?

2 MR. FLYNN: You also misparaphrased it from
3 "misunderstandings" to "understandings." Your
4 question differed from the statement.

5 A. I don't agree that the way you phrase it is --
6 is -- is accurate, and I don't agree that whoever
7 wrote this had a complete understanding of what the
8 Institute's function was.

9 Q. Sir, it goes on to say, "The tools used to
10 accomplish this run the complete gamut of public
11 relations techniques: letters-to-the-editor, a
12 bimonthly newsletter, feature article placements,
13 pamphlets and brochures, films, direct mail and
14 one-on-one communication with government officials;"
15 correct?

16 A. It says that, yes.

17 Q. Now sir, all of those techniques were used by
18 The Tobacco Institute to put forth statements to the
19 public on the issues of smoking and health; isn't
20 that true?

21 A. I don't know that to be true, no.

22 Q. All right. You have a problem with which one of
23 these techniques, sir?

24 A. I don't know that feature article placements,
25 whatever that refers to, is accurate. I don't know

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 what they mean by films with respect to The Tobacco
2 Institute's activity. Direct mail, I'm not sure what
3 they refer to there.

4 Now this entire document is -- may or may not be
5 accurate. I don't know who wrote it. It's --
6 there's no indication here anywhere that this is an
7 official Institute document.

8 Q. Sir, isn't it a fact that The Tobacco Institute
9 issued press releases on a fairly regular basis
10 concerning smoking-and-health issues?

11 MR. FLYNN: Objection as vague and
12 ambiguous.

13 A. I have no idea what you mean by "fairly regular
14 basis."

15 Q. All right. Isn't it a fact that The Tobacco
16 Institute from time to time would issue press
17 releases on smoking-and-health-related issues?

18 A. There were occasions when The Tobacco Institute
19 issued press releases on a smoking-and-health issue.

20 Q. And one of the purposes for issuing those press
21 releases was to get articles written up in
22 newspapers.

23 A. Yes, uh-huh.

24 Q. Now sir, you took exception with the -- to the
25 fact -- to the reference to films. Isn't it a fact

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that The Tobacco Institute has films that were made
2 available to the public on the issue of smoking and
3 health?

4 A. We may have had at one time.

5 Q. Okay. Now you also took exception to the use of
6 direct mail by The Tobacco Institute. Isn't it a
7 fact that The Tobacco Institute on at least one
8 occasion wrote letters to presidents of various
9 American corporations to try and counteract
10 communications sent by the Secretary of Health,
11 Education & Welfare?

12 A. I don't recall that.

13 Q. You just don't know one way or the other; do
14 you, sir?

15 A. I don't recall that.

16 Q. Now sir, isn't it also true that The Tobacco
17 Institute from time to time would take out ads with
18 coupons so that the public could contact the
19 Institute and receive publications?

20 MR. FLYNN: I object to the form because
21 you said "isn't it also true." He's got to accept
22 that to answer the question. It's a dual question.
23 If you'd ask the next question, that would be fine.
24 As framed, it's a dual question.

25 A. Could you repeat the question?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Sir, isn't it true that The Tobacco Institute
2 from time to time would take out ads with coupons in
3 them so that the public could contact the Institute
4 and receive various Tobacco Institute publications on
5 the issues of smoking and health?

6 A. I don't know that we ever did such advertising
7 on -- to promote smoking-and-health publications. If
8 we did, I'm unaware of it.

9 Q. You just don't know one way or the other if that
10 ever occurred.

11 A. I don't know.

12 Q. Okay. Sir, isn't it a fact that the tobacco
13 industry -- strike that.

14 Isn't it a fact that The Tobacco Institute's
15 position was essentially to create doubt about the
16 health charge without actually denying it?

17 A. No.

18 MR. FLYNN: Objection.

19 Q. Who was Horace Kornegay again?

20 A. He was the president of The Tobacco Institute.

21 Q. And who was Fred Panzer?

22 A. Fred was a vice-president of The Tobacco
23 Institute.

24 (Plaintiffs' Exhibit 405 was marked
25 for identification.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 405, this is a document that has
4 several different Bates numbers. One of them is
5 87657703; correct?

6 MR. FLYNN: It's my under --

7 This is again another supplemental production of
8 documents. You're -- over 50 percent of what you've
9 done is the supplemental stuff. But if you're going
10 to ask him about this -- we're not going to go a
11 whole lot longer with this supplemental without the
12 court hearing about it -- then he's got the right to
13 read this because it's not been provided to us prior
14 to this supplemental thing.

15 MS. WIVELL: I take great exception to
16 that. I personally copied this document and made
17 sure that it was provided to your office.

18 MR. FLYNN: In the original supplement --
19 in the original determination?

20 MS. WIVELL: Now sir, I'm going to go ahead
21 with this deposition, I'm not --

22 MR. FLYNN: He's going to read the
23 document.

24 MS. WIVELL: Fine. We can go off the
25 record and he can read it.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: I want the record to reflect
2 it's ten twenty -- 11:29. And I guess the reporter
3 is between a rock and a hard place. I want the
4 record to reflect it's 11:29. It's a document
5 produced to our office in Minneapolis Friday night.
6 This witness hasn't had -- needs an opportunity to
7 read and review this if you're going to examine him,
8 because it wasn't in the first --

9 And I'm having trouble here. Why is 80 percent
10 of this stuff supplemental, and -- and the -- the
11 other two boxes you dumped on us three days before
12 that, you've used about one-third of them and 80 --
13 70 percent of these things? But he's got the right
14 to read this. He's going to read the thing.

15 MS. WIVELL: Fine, he can read it.

16 THE REPORTER: Off the record, please.

17 MR. FLYNN: At 11 -- put on the record at
18 11:30 we're off the record.

19 (Discussion off the record.)

20 MR. FLYNN: Again, the record should
21 reflect that this is not a complete, integral
22 document.

23 Was that on?

24 THE REPORTER: Yes.

25 MR. FLYNN: Okay.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. WIVELL: Well while we were off the
2 record we determined that it is a complete document
3 as produced. It is consecutively Bates numbered
4 87657703, 04, 05, 06, and it was produced, according
5 to the 4B entries, with those Bates numbers.

6 MR. FLYNN: By whom?

7 Q. Sir, you've had the opportunity --

8 MR. FLYNN: Wait. By whom? Is it your
9 assertion --

10 MS. WIVELL: Excuse me. This -- I'm not
11 having my deposition taken, and I really, really
12 object to you interrupting my questions to try and
13 question me, Mr. Flynn.

14 MR. FLYNN: I haven't interrupted you. I'm
15 trying to get straight what the background of the
16 document is because we got it the day before
17 yesterday.

18 MR. GOOLD: George, we --

19 MR. FLYNN: That's all right.

20 MR. GOOLD: -- we talked about it while you
21 were away.

22 MR. FLYNN: Let it be then. Go ahead. Ask
23 your question.

24 BY MS. WIVELL:

25 Q. You've had the opportunity to review Exhibit 405

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 while we were off the record.

2 A. That's correct.

3 Q. Now this document was written by a

4 vice-president of the tobacco industry -- I'm sorry.

5 Strike that.

6 This document was written by a vice-president of

7 The Tobacco Institute to the president of The Tobacco

8 Institute; correct?

9 A. Yes, uh-huh.

10 Q. All right. And it concerns the strategy that

11 the tobacco industry had employed for the past 20

12 years to defend itself; correct?

13 A. I must take issue with that. What it -- what it

14 lays out is apparently Mr. Panzer's view of that

15 strategy, which doesn't comport with anything I've

16 ever heard or read before.

17 Q. Well sir --

18 A. I'd have to conclude that he doesn't know what

19 he's talking about.

20 Q. Well Mr. Panzer was a vice-president in 1972, at

21 the time this memo was written; correct?

22 A. I don't know that.

23 Q. He was a vice-president of the tobacco

24 industry -- I'm sorry.

25 You don't know whether he was a vice-president

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of The Tobacco Institute in 1972 when this document
2 was written?

3 A. No, I don't. I wasn't there then.

4 Q. Okay. So you have no really basis -- I'm
5 sorry. Strike that.

6 Have you ever talked to Mr. Panzer about this
7 document?

8 A. No, not about this document.

9 Q. Did you ever talk to Mr. Kornegay about this
10 document?

11 A. No.

12 Q. So would it be fair to say that you don't have
13 any basis for taking exception -- I'm sorry.

14 You don't have any basis for knowing whether Mr.
15 Panzer knew or didn't know what he was talking about;
16 correct?

17 MR. FLYNN: Well objection, it's
18 argumentative.

19 A. I -- I know what I know about the industry and
20 what the industry has said and done in the last 21
21 years, so this opinion of Mr. Panzer's doesn't
22 dovetail with any of that in any respect that I'm
23 familiar with.

24 Q. Sir, you've seen this document before; haven't
25 you?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes, I have.

2 Q. You were shown this document at trial; weren't
3 you, sir?

4 A. I was.

5 Q. You were. So you have seen it before; haven't
6 you?

7 A. Yes.

8 Q. All right. And according to this document,
9 which is dated 1972, for nearly 20 years the industry
10 had employed a single strategy to defend itself on
11 three major fronts; correct?

12 MR. FLYNN: Objection, it speaks for
13 itself, but --

14 A. That's what it says.

15 Q. And the three fronts were litigation, politics
16 and public opinion; right?

17 A. That's what Mr. Panzer says.

18 Q. All right. And then this vice-president of The
19 Tobacco Institute goes on to talk about the strategy
20 as being brilliantly conceived and executed; right?

21 MR. FLYNN: Object. It assumes a set of
22 facts not in evidence, that he was a vice-president.
23 But -- the question is dual in that respect.

24 MS. WIVELL: Go ahead.

25 A. That's what Mr. Panzer writes here.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now sir, he also goes on to discuss a holding
2 strategy; doesn't he?

3 MR. FLYNN: Again the document speaks for
4 itself, but --

5 A. There is reference to what he refers to as a
6 holding strategy.

7 Q. And the first leg of that holding strategy was,
8 quote, "creating doubt about the health charge
9 without actually denying it," close quote. Correct?

10 A. That's what Mr. Panzer says.

11 Q. All right.

12 A. I've never known that to be the case, however.

13 Q. Move to strike the non-responsive portion of the
14 answer.

15 Sir, isn't it true that the tobacco industry set
16 about to create a controversy where there was none?

17 MR. FLYNN: Objection, it's argumentative.
18 It's so vague and ambiguous --

19 A. With regard to what?

20 Q. Let me rephrase the question.

21 Isn't it true that the tobacco industry set
22 about to create a controversy concerning the
23 relationship of smoking and health where there was
24 none?

25 MR. FLYNN: Same objection.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That certainly is not consistent with what I
2 have always known and believed about the
3 smoking-and-health controversy.

4 Q. Sir, isn't it true that The Tobacco Institute
5 even went so far as to publish, after the Surgeon
6 General's report, a booklet entitled "THE CIGARETTE
7 CONTROVERSY: An examination of the facts by The
8 Tobacco Institute?"

9 MR. FLYNN: Objection, it's argumentative.
10 What do you mean "went so far?"

11 A. Which --

12 Q. Let me rephrase the question.

13 Isn't it true that The Tobacco Institute
14 published, after the Surgeon General's -- the first
15 Surgeon General's report, a booklet entitled, quote,
16 "THE CIGARETTE CONTROVERSY: An examination of the
17 facts...?"

18 A. I don't know when that publication first came
19 out. We've certainly responded to charges about
20 smoking and health leveled at the tobacco industry.

21 (Plaintiffs' Exhibit 406 was marked
22 for identification.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as
25 Plaintiffs' Exhibit 406, this is a document entitled,

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 quote, "THE CIGARETTE CONTROVERSY: An examination of
2 the facts by The Tobacco Institute," close quote;

3 correct?

4 A. Yes, it is.

5 Q. It's dated --

6 This version is dated April 16th, 1968; right?

7 A. Yes.

8 Q. The Bates number of this document is

9 TIMN0071046; right?

10 A. Yes, right.

11 Q. This is a document you've seen before; isn't it?

12 A. I believe it is.

13 Q. And this is a -- a publication that was put out
14 by The Tobacco Institute to the public; right?

15 A. Well that's an assumption. I don't know if it
16 ever was put out. This would have been, what, eight
17 years before I got to the Institute.

18 Q. Did you --

19 A. If it was still in use then, if it had ever been
20 distributed, I don't know of it.

21 Q. Did you, knowing that this document was going to
22 be discussed today, do an investigation to find out
23 when it was first published?

24 A. No. That wouldn't have been possible

25 considering the mass of documents that you provided

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 us.

2 Q. Sir, could you turn to the page that ends with
3 Bates number 066.

4 A. All right.

5 Q. There the second-to-the-last complete paragraph
6 has an underlined sentence; doesn't it?

7 A. It does.

8 Q. And the sentence immediately preceding that
9 underlined sentence says, quote, "No scientific
10 proof, then, has been found to convict smoking as a
11 hazard to health," close quote; correct?

12 A. Correct.

13 Q. All right. And it is true, isn't it, that The
14 Tobacco Institute has consistently in its public
15 statements on smoking and health taken the position
16 that no scientific proof had been found to
17 convince -- to convict smoking as a hazard to
18 health?

19 MR. FLYNN: That's argumentative and so
20 broad and vague, but --

21 A. We have said that from time to time.

22 Q. And in fact you intended people who received
23 this publication and read it to believe what was
24 being said; correct?

25 A. Correct.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: Objection.

2 Q. All right. And sir, the sentence -- the
3 paragraph goes on to say, quote, "The statistical,
4 clinical and experimental findings have not
5 established smoking as a cause of any disease," close
6 quote.

7 A. That -- that is correct.

8 Q. And in fact The Tobacco Institute intended the
9 people who received this publication and read it to
10 believe what the Tobacco Institute was saying.

11 MR. FLYNN: That's repetitive a fifth
12 time. Go ahead.

13 A. Yes.

14 Q. Now this document also talks about -- I'm
15 sorry. Strike that.

16 If you turn to the second page of the document,
17 it starts with the question, quote, "Do cigarettes
18 cause disease?" Right?

19 A. Yes, it does.

20 Q. And then it goes on to try and answer that
21 question.

22 MR. FLYNN: Again it speaks for itself,
23 but --

24 A. Was there a question? Is there a question on
25 the table here?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Yes, sir. Then it goes on to try and answer
2 that question; doesn't it?

3 A. Yes, it does.

4 Q. All right. And this document denies that
5 smoking causes premature death; doesn't it?

6 MR. FLYNN: Objection, it speaks for
7 itself.

8 It's so much easier to read it to him. Then we
9 wouldn't have your paraphrase.

10 A. I'd have to find that reference. I can't
11 immediately.

12 Q. All right. Well there is a -- a list of a
13 summary of the issues in a question-and-answer format
14 that appears on that page; isn't that true, sir?

15 A. Yes.

16 Q. And it says, quote -- or question, "Has it been
17 proven that smoking cause premature death?" And the
18 answer that's given is no; right?

19 A. And a reference to another page.

20 Q. All right. Sir, isn't it true that The Tobacco
21 Institute, in giving that question and answer,
22 intended people to believe that smoking did not cause
23 premature death?

24 MR. FLYNN: Objection, that's
25 argumentative.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That's -- that's not what it says. It says it
2 hasn't been proved that smoking causes premature
3 death.

4 Q. All right. Well let me rephrase my question.

5 Isn't it true that by saying that it has not
6 been proven that smoking causes premature death, the
7 tobacco industry -- I'm sorry, The Tobacco Institute
8 intended readers to believe that?

9 MR. FLYNN: Objection, it's argumentative.

10 A. We certainly wanted people who read that
11 statement to believe that statement.

12 Q. If you go on to the next page, the second --
13 there's another set of question and answers; right?

14 A. Yes.

15 Q. And if you look at the second set of questions
16 and answers, that question says, "Do statistics prove
17 that cigarette smoking is a cause of lung cancer,
18 heart disease, emphysema, bronchitis and other
19 diseases?" That's the question; right?

20 A. It is.

21 Q. And then it says, "No. Statistics alone cannot
22 prove the cause of any disease;" doesn't it?

23 A. It does.

24 Q. And sir, The Tobacco Institute intended that
25 people who read that question and answer would

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 believe that.

2 A. We hoped they would.

3 Q. Now the next question and answer says, "Does the
4 experimental and clinical evidence prove the case
5 against smoking?" And the answer that's given is no;
6 correct?

7 A. Yes, with a reference to a page.

8 Q. All right. And isn't it a fact that The Tobacco
9 Institute wanted people to believe that the
10 experimental and clinical evidence did not prove the
11 case against smoking?

12 MR. FLYNN: Objection, that's
13 argumentative. It says what it says. You've now
14 twisted it into a negative.

15 A. We certainly hoped that anyone reading this
16 would believe just what it says.

17 Q. Now sir, if you go on to the next page -- I'm
18 sorry.

19 If you go on to the page that ends with Bates
20 number 049, --

21 A. All right.

22 Q. -- the last sentence of that page says, "What is
23 the truth about the cigarette controversy?" Right?

24 A. It does.

25 Q. And then The Tobacco Institute went on to set

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 out the truth as it saw it; right?

2 MR. FLYNN: That's argumentative. What do
3 you want him --

4 It's so vague, ambiguous, argumentative.

5 A. We -- we did set forth several facts and -- and
6 perspectives as we viewed them.

7 Q. And The Tobacco Institute intended people who
8 received this publication and read it to believe what
9 was said there; right?

10 A. Yes.

11 Q. Would you turn to page 23 of the document.

12 MR. FLYNN: That's the Bates number or the
13 author number? The author number? "MORE
14 CHALLENGES....," is that the page?

15 MS. WIVELL: I'm looking.

16 Well we can strike that.

17 BY MS. WIVELL:

18 Q. Sir, isn't it true that from the beginning The
19 Tobacco Institute and its spokesmen have, in the
20 public statements that they have put forward
21 concerning smoking and health, have indicated The
22 Tobacco Institute's willingness to provide
23 information to fill in gaps of knowledge?

24 MR. FLYNN: Objection, that's so vague and
25 ambiguous and broad, from the beginning.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I don't know that that's been the case always.

2 Q. Well sir, at the time you joined the

3 Institute -- no, strike that.

4 Sir, isn't it true that a theme that runs

5 through the public statements that The Tobacco

6 Institute has made on smoking-and-health-related

7 issues, one of the themes is that the tobacco

8 industry is intending to fill in gaps of knowledge?

9 MR. FLYNN: Objection, that's

10 argumentative, without foundation, broad, vague.

11 A. I -- I couldn't agree with that the way it's

12 phrased.

13 Q. Well can you get out Exhibit 396, that ad that

14 features you.

15 A. Yes.

16 Q. That ad talks about filling in the blanks;

17 doesn't it?

18 A. The government's blanks.

19 Q. All right. And one of the themes of that ad is

20 that there is information out there that The Tobacco

21 Institute wanted to get into the hands of the public

22 concerning the issue of smoking and health.

23 MR. FLYNN: Again it speaks for itself.

24 But --

25 A. It says the subject of smoking.

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Well sir, isn't it a fact that there are other
2 public statements that The Tobacco Institute has
3 issued that declared that it was the intent of the
4 industry to fill in the many gaps of knowledge
5 concerning smoking that presently exists?

6 A. Well while certainly The Tobacco Institute might
7 be able to provide some information, some
8 perspectives. I don't think we could fairly be
9 expected to fill them all in. I mean we're a trade
10 association. We represent the tobacco companies, we
11 represent their interests. Our perspectives should
12 represent them. We're not going to be responsible
13 nor do we have the obligation to present every single
14 piece of information on any tobacco subject.

15 (Plaintiffs' Exhibit 407 was marked
16 for identification.)

17 BY MS. WIVELL:

18 Q. Sir, showing you what's been marked as
19 Plaintiffs' Exhibit -- oh, I'm sorry. This has
20 already been marked as an exhibit. It's already been
21 marked as Exhibit 254.

22 THE REPORTER: Let's go off the record,
23 please.

24 (Discussion off the record.)

25 (Plaintiffs' Exhibit 407 was withdrawn)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 from the record.)

2 BY MS. WIVELL:

3 Q. Sir, let me start again. We have previously
4 marked this exhibit as 254, so we have crossed off
5 the 407 number and written 254 at the top of this
6 exhibit. Sir --

7 MR. FLYNN: Put the document number on so
8 we know.

9 MS. WIVELL: I'm going to.

10 MR. FLYNN: Okay.

11 MS. WIVELL: For the record, this is
12 TIMN0131641-42.

13 BY MS. WIVELL:

14 Q. I have shown you Exhibit 254, which is a press
15 release from The Tobacco Institute; isn't it, sir?

16 A. Purports to be. Dated 1969, yes. Uh-huh.

17 Q. And it lists the contact person, William
18 Kloepfer, Jr.

19 A. It does.

20 Q. And he was --

21 He held what position?

22 A. He was vice-president of The Tobacco Institute.

23 Q. Vice-president of public relations; right?

24 A. Yes. Public relations, yes.

25 Q. And this press release is one of the types that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 The Tobacco Institute would issue from time to time
2 on smoking-and-health-related issues; correct?

3 A. Well this was on a specific legislative issue.

4 Q. Relating to smoking and health; right?

5 A. Relating to cigarette labeling.

6 Q. And it starts out, "The nation's cigarette
7 makers voiced their support today for Congressional
8 bills to extend the smoking and health law enacted
9 four years ago;" right?

10 A. It does.

11 Q. Now if we turn to the second page, the theme of
12 what Mr. Cullman -- I'm sorry. Let me start again.

13 This document quotes Joseph F. Cullman 3rd,
14 chairman of Philip Morris and a member of the tobacco
15 industry's executive committee; right?

16 MR. FLYNN: You misspoke, it's Institute
17 Institute's committee, not industry.

18 MS. WIVELL: Okay. Let me rephrase the
19 question.

20 Q. This document quotes Joseph F. Cullman 3rd,
21 chairman of Philip Morris, Inc. and of The Tobacco
22 Institute's executive committee.

23 A. Yes, it does.

24 Q. And had Mr. Cullman testified before Congress?

25 MR. FLYNN: Are you asking if he knows

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that?

2 A. I don't know if he had or not.

3 Q. It refers to him stating the industry's position
4 in testimony before the House Interstate and Foreign
5 Commerce Committee.

6 A. Yes.

7 Q. Right?

8 A. Yes, it does.

9 Q. And Mr. Cullman told the committee his Institute
10 was profoundly conscious of questions raising --
11 raised concerning smoking and health; right?

12 MR. FLYNN: You're quoting the document.

13 A. Yes, that's what the document says.

14 Q. And at the end of the document Mr. Cullman goes
15 on to say -- or goes on to give a couple of quotes
16 that are used in this press release; right?

17 A. Yes, there are several. Several quotes
18 attributed to Mr. Cullman are in this press release.

19 Q. And one of the quotes that's attributable to him
20 is -- begins, "We hope that governmental and private
21 health research agencies will not only continue--but
22 that they will also accelerate--their efforts to
23 learn the truth concerning the smoking and health
24 issue and to fill the many gaps in knowledge which
25 presently exist;" right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That's an accurate reading of the quotation,

2 yes.

3 Q. All right.

4 MS. WIVELL: Why don't we take our lunch

5 break.

6 THE REPORTER: Off the record, please.

7 (Luncheon recess taken at 12:01 o'clock

8 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 AFTERNOON SESSION

2 (Deposition reconvened at 1:10 o'clock
3 p.m.)

4 BY MS. WIVELL:

5 Q. Sir, isn't it a fact that the tobacco industry
6 has consistently taken the position that the
7 questions of smoking and health is embroiled in
8 controversy?

9 MR. FLYNN: I object, it's argumentative
10 and so overbroad, vague.

11 A. Our -- our position over the years has been that
12 there is controversy surrounding smoking-and-health
13 issues.

14 Q. And you -- strike that.

15 The tobacco industry has taken that position
16 even in the face of the government position to the
17 contrary; right?

18 MR. FLYNN: Object, that's argumentative,
19 so vague and ambiguous.

20 A. We -- we certainly think that we have a right to
21 disagree with official government pronouncements,
22 especially if scientists and doctors don't agree with
23 those official government pronouncements either.

24 (Plaintiffs' Exhibit 407 was marked
25 for identification.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 BY MS. WIVELL:

2 Q. Sir, showing you what's been mark as Plaintiffs'
3 Exhibit 407, it's a Tobacco Institute press release
4 dated March 12th, 1971; right?

5 A. That's what it looks like, yes.

6 Q. And the Bates number is TIMN0120570; correct?

7 A. It is.

8 Q. Now the press release starts out by saying, "The
9 cigarette industry declared today that the question
10 of smoking and health is, quote, embroiled in
11 controversy, close quote, and accused the Federal
12 Commission -- Federal Communications Commission of a,
13 quote, sudden turnabout, quote, when it ruled to the
14 contrary." Right?

15 A. That's what it says.

16 Q. And in fact this press release was sent out to
17 all the various newspapers and wire services; wasn't
18 it?

19 A. I don't know the extent to which it was
20 released.

21 Q. All right. But typically when TI sends out a
22 press release, it goes to the wire services; doesn't
23 it?

24 A. Well it may or it may not. It depends on the
25 nature of the release.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. A press release like this one would have been
2 sent to the wire services, national wire services;
3 right?

4 A. I just don't know, to tell you the truth.

5 Q. Well --

6 A. Even if I had been there in 1971, I don't think
7 I'd remember specifically where and to whom a
8 specific release was delivered.

9 Q. Well sir, isn't there a typical release list
10 that The Tobacco Institute has for press releases?

11 A. We have a distribution list for general news
12 releases.

13 Q. Who is on the --

14 A. It may not -- it may not always --

15 Releases may not always go to everyone on that
16 list.

17 Q. But who generally is on that list, sir?

18 A. I'd have to refer to the list specifically to be
19 able to tell you. I don't think I've looked at it in
20 years.

21 Q. All right. Well what, to the best of your
22 recollection, are the kinds of -- of organizations
23 that are on the release list?

24 A. Obviously it would be major news media. What
25 specific ones, again I'd be much more comfortable if

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 I was able to look at the list before responding
2 because I just don't recall.

3 Q. All right. But sir, it would be fair to say
4 that typically when The Tobacco Institute issues a
5 press release, it goes to the -- whoever is on the
6 distribution list; right?

7 A. Well not necessarily. It may or it may not. It
8 depends upon the nature of the news release itself.
9 We have certainly issued news releases that don't go
10 to everybody on that distribution list.

11 Q. Sir, when The Tobacco Institute in this press
12 release dated nineteen ninety -- or 1971 said that
13 the question of smoking and health is embroiled in
14 controversy, it intended the people who read that
15 statement to believe it; isn't that true?

16 MR. FLYNN: Objection as argumentative.

17 A. Well whenever we issue a written statement, we
18 would like those who are exposed to it to believe it,
19 certainly.

20 Q. You're aware that The Tobacco Institute has from
21 time to time issued press releases that said that
22 scientific research into the subject of tobacco use
23 and human health does not substantiate generalized
24 charges against smoking as a cause of cancer.

25 A. I don't remember that specific phrase, no.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: I'm sorry, is this one of the
2 supplemental things?

3 (Plaintiffs' Exhibit 408 was marked
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as
7 Plaintiffs' Exhibit 408, this is a document Bates
8 numbered 500518708; correct?

9 A. That is correct.

10 Q. And it is a Tobacco Institute Research Committee
11 press release; isn't it?

12 MR. FLYNN: I'm sorry, just --

13 A. No.

14 MR. FLYNN: I want to find the document on
15 the list.

16 MS. WIVELL: Fine, you can do so quietly
17 and we'll proceed with the deposition.

18 MR. FLYNN: No, you won't.

19 MS. WIVELL: Yes, we will.

20 MR. FLYNN: I have a right to see if this
21 document has been listed, if you'd give me the
22 courtesy of 10 seconds. Or tell me if it's on the
23 list.

24 MS. WIVELL: I'm going to continue with the
25 deposition and we're not going to take time.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: He's not going to answer the
2 question until we find if the document is properly
3 identified. We'll wait.

4 MS. WIVELL: Fine, we'll go off the record
5 because we're not going to waste time while you do
6 that.

7 MR. FLYNN: Then tell me if it's on your
8 list.

9 MS. WIVELL: It's on one of the two lists,
10 Mr. Flynn.

11 MR. GLYNN: No. Which one? Because if
12 it's on the later one, the witness has the right to
13 review it. We've established this already.

14 MS. WIVELL: Off the record.

15 THE REPORTER: Off the record, please.

16 (Discussion off the record.)

17 BY MS. WIVELL:

18 Q. Sir, Exhibit 408 is a Tobacco Institute Research
19 Committee press release dated 1957; right?

20 A. Yes, it is.

21 Q. Okay. And it claims that "Extensive research
22 now under way into tobacco use and human health does
23 not substantiate generalized charges against smoking
24 as a cause of cancer;" right?

25 A. That's -- that's what Dr. Little says.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. All right. And this press release goes on to
2 say, "No substance has been found in tobacco smoke
3 known to cause cancer in human beings, nor is any
4 specific mouse carcinogen found that accounts for
5 biologic activity reported on skins of some
6 laboratory mice;" right?

7 A. Yes, that's one of the points that Dr. Little
8 makes.

9 Q. And sir, those points have been repeated in
10 Tobacco Institute press releases over the years;
11 haven't they?

12 MR. FLYNN: Objection as vague and
13 ambiguous.

14 A. Well this first point that you read -- let's
15 see. Certainly at least part of that has formed
16 portions of tobacco industry and Tobacco Institute
17 statements. The rest of them I'm not certain of
18 because I haven't looked at them.

19 Q. Did you look at any public statements from The
20 Tobacco Institute other than the ones I provided to
21 you before this deposition?

22 A. No. There simply wasn't time.

23 Q. Well sir, when did you first learn that you were
24 going to be the designee for The Tobacco Institute
25 for this deposition?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I don't recall.

2 Q. Was it last week?

3 A. I believe I told you I don't recall.

4 Q. Well sir, I'm asking for your best estimate,
5 your best recollection.

6 A. And I don't recall.

7 Q. Well sir, you knew that your deposition was
8 noted last month; didn't you?

9 A. If I could give you even a range, I'd be happy
10 to do so. I don't recall.

11 (Plaintiffs' Exhibit 409 was marked
12 for identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as
15 Plaintiffs' Exhibit 409, this is a -- another Tobacco
16 Institute Research Committee press release Bates
17 number 500518759, right?

18 MR. FLYNN: I object to the description of
19 the document. It's not Tobacco Institute. You've
20 misread the document.

21 MS. WIVELL: I'm sorry. Let me rephrase
22 the question.

23 Q. Sir, Exhibit 409 is a Tobacco Industry Research
24 Committee press release dated 1958; correct?

25 A. Yes, it is.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And this document is Bates numbered 500518759;
2 right?

3 A. Yes, it is.

4 Q. Now at the bottom of the first page the claim is
5 made that "Experiments in various institutions in
6 this country and abroad with animals inhaling tobacco
7 smoke have failed to induce lung cancer;" correct?

8 MR. FLYNN: I object to your argumentative
9 recitation of the document, but go ahead.

10 A. Yes, that is a correct reading of that one
11 single point.

12 Q. All right. And sir, isn't it a fact that that
13 representation has also been made in tobacco industry
14 press releases? I'm sorry.

15 And is it true that that representation has also
16 been made in Tobacco Institute press releases?

17 A. I think in -- in some form or another that
18 sentiment has probably been expressed in Tobacco
19 Institute press releases.

20 Q. And what --

21 A. Attributing it to scientists who have made that
22 observation.

23 Q. And when that observation was made in Tobacco
24 Institute press releases, The Tobacco Institute
25 intended the reader to believe that statement; isn't

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 that true?

2 A. Clearly --

3 MR. FLYNN: Objection. Go ahead. I object
4 as argumentative, but go ahead.

5 A. Clearly we hoped that anyone who read a
6 statement from the Institute or read one of our
7 publications would believe it.

8 Q. Now if you look at the second page of Exhibit
9 409, the claim is made that "Compelling doubts have
10 been raised about the statistics and their
11 interpretations involving smoking and health;"
12 right?

13 MR. FLYNN: I object to your reference
14 without the preface to this statement. But subject
15 to that, he can answer.

16 A. That is one of the statements made on that page,
17 yes.

18 Q. And that's claimed to be a fact; isn't it, sir?

19 MR. FLYNN: The document speaks for itself,
20 objection on that basis. This is a Reynolds
21 document.

22 THE WITNESS: It's claimed to be.

23 A. Yes, it is.

24 Q. And sir, that statement has also been made in
25 Tobacco Institute press releases; hasn't it?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: Objection, argumentative, vague
2 and ambiguous. That specific statement?

3 A. No, it's -- I --

4 I think it would be unfair of me, or you for
5 that matter, to suggest that that specific statement
6 was ever made in a Tobacco Institute document. I
7 think that it's quite true that the sense of that may
8 have been conveyed in a Tobacco Institute news
9 release, again quoting experts in the field.

10 Q. Now sir, when The Tobacco Institute issued press
11 releases like these last two exhibits --

12 MR. FLYNN: Well I object. Those aren't
13 issued by The Tobacco Institute.

14 MS. WIVELL: I didn't say they were.

15 MR. FLYNN: Well I object to your
16 characterization.

17 Q. When The Tobacco Institute issued press releases
18 on the issue of smoking and health, it hoped that
19 stories would be placed in newspapers throughout the
20 country that repeated those statements.

21 MR. FLYNN: Object as argumentative.

22 A. I think that is a -- an improper
23 characterization. We would issue a news release
24 summarizing our views on a subject in the hope that
25 it would inform a reporter. The reporter then, of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 course, and the editor, are free to decide what goes
2 into a story and how it's distributed, if it is at
3 all. We don't place stories in that regard. We have
4 no ability to do that.

5 (Plaintiffs' Exhibit 410 was marked
6 for identification.)

7 BY MS. WIVELL:

8 Q. Sir, showing you what's been marked as
9 Plaintiffs' Exhibit 410, at the top it says
10 "Distribution of the" -- I'm sorry. Let me identify
11 it for the record first.

12 This is a document Bates numbered 500507949;
13 correct?

14 A. It is.

15 Q. All right. And it says at the top,
16 "Distribution of the October issue of Tobacco and
17 Health resulted in widespread publicity for several
18 important scientific studies. The Tobacco
19 Institute's new statements were also widely
20 reported." Correct?

21 A. That's what it says, yes.

22 Q. And one of the -- I'm sorry. Strike that.

23 Underneath that heading there are xerox copies
24 of four different news articles which ran in four
25 different newspapers throughout the country; right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I don't think I would characterize them that
2 way. They're not all different in the first place.

3 Q. Well there's a story from the Austin, Texas
4 newspaper; right?

5 A. Yes.

6 Q. And then there's a story from the News Tribune
7 in Duluth, Minnesota; right?

8 A. Yes.

9 Q. And that story starts out by referencing the
10 tobacco industry --

11 MR. FLYNN: No, Institute.

12 MS. WIVELL: I'm sorry.

13 MR. FLYNN: You're misreading it.

14 MS. WIVELL: Let me restate that.

15 Q. And the story from the Duluth News Tribune
16 references The Tobacco Institute; correct?

17 A. Well they both do.

18 Q. Well I'm focusing on the story from the Duluth,
19 Minnesota paper.

20 A. All right.

21 Q. All right? And that starts out, "The Tobacco
22 Institute said Thursday a new review by scientists
23 gave six reasons why the, quote, cigarette theory,
24 quote, has been overestimated as a cause of lung
25 cancer."

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: It's "overstressed." I don't
2 know why you're misreading it.

3 MS. WIVELL: Let me rephrase the question.

4 BY MS. WIVELL:

5 Q. "The Tobacco" -- I'm sorry.

6 The story from the Duluth News Tribune starts
7 out by saying, quote, "The Tobacco Institute said
8 Thursday a new review of scientists gave six reasons
9 why, quote, the cigarette theory, quote, has been
10 overstressed as a cause of lung cancer;" right?

11 A. That is correct.

12 Q. And sir, isn't it a fact that there was a press
13 release from The Tobacco Institute that gave the
14 information that's printed in this story?

15 A. I have no idea. I mean this -- this story comes
16 from United Press International.

17 Q. And that's the wire --

18 A. Where they received their information originally
19 I have no idea. Can't tell from this.

20 Q. That's a wire service; isn't it, sir?

21 A. Yes, it is.

22 Q. UPI? Okay.

23 And sir, if The Tobacco Institute had issued a
24 press release -- no, strike that.

25 Did The Tobacco Institute collect stories that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 were published that referenced press releases they
2 had issued?

3 A. Among the newspaper stories which were collected
4 on our behalf by third parties, there would have been
5 stories which mentioned Tobacco Institute statements
6 or news releases.

7 Q. Who were the third parties you were just
8 referencing?

9 A. News clipping services.

10 Q. Any other third party?

11 A. That's what I was thinking of.

12 Q. So it's fair to say that The Tobacco Institute
13 employed a news clipping service?

14 A. Yes.

15 Q. One or more?

16 A. Yes.

17 Q. Who was the news clipping service?

18 A. Burrell's, I believe.

19 Q. And would you explain to the ladies and
20 gentlemen of the jury what a news clipping service is
21 in case they don't know?

22 A. Well it's a service that peruses a number of
23 newspapers, depending upon the client's wishes,
24 looking for stories which mention the client or an
25 item at issue the client is interested in. Those

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 newspaper clippings are then forwarded to -- to the
2 client.

3 Q. And does that fall under your area of
4 responsibility as director of communications with The
5 Tobacco Institute?

6 A. It does not. I am only vaguely familiar with it
7 through my contact with colleagues.

8 Q. I'd like to get back to the issue of the press
9 releases that The Tobacco Institute issued.

10 Isn't it true that The Tobacco Institute issued
11 press releases that said that the Institute was
12 vitally interested in getting the facts that will
13 provide answers to the questions about smoking and
14 health?

15 A. If you've got a news release that says that, I'd
16 be happy to look at it. But I don't remember
17 specifically.

18 Q. You don't have any recollection of any press
19 releases that made those kinds of claims.

20 A. Not specifically. But as I said, if you have
21 one, I'd be happy to look at it.

22 (Plaintiffs' Exhibit 411 was marked
23 for identification.)

24 BY MS. WIVELL:

25 Q. Sir, showing you what's been marked as

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Plaintiffs' Exhibit 411, it is a document Bates
2 numbered TIMN0118245; correct?

3 A. Correct.

4 Q. And it is a Tobacco Institute press release
5 dated November 3rd, 1963; correct?

6 A. Correct.

7 Q. And it's entitled "TOBACCO INSTITUTE CONFIDENT
8 RESEARCH WILL FIND ANSWERS, GEORGE ALLEN SAYS."

9 MR. FLYNN: You misread it again. Says
10 "TOBACCO INDUSTRY," not "INSTITUTE."

11 MS. WIVELL: I'm sorry. Not doing that
12 deliberately. Let me start again.

13 Q. And it's entitled "TOBACCO INDUSTRY CONFIDENT
14 RESEARCH WILL FIND ANSWERS, GEORGE ALLEN SAYS;"
15 right?

16 A. That is correct.

17 Q. George Allen was at this time president of The
18 Tobacco Institute; right?

19 A. Yes, he was.

20 Q. And do you see, approximately two-thirds of the
21 way down the page, Mr. Allen states, quote, "We are
22 vitally interested in getting the facts that will
23 provide answers to questions about smoking and
24 health?"

25 A. Correct.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. He goes on to say, "We also want full knowledge
2 about the causes of those diseases with which smoking
3 has been statistically associated;" right?

4 A. Yes.

5 Q. Now sir, when The Tobacco Institute president
6 made that statement, it was the Institute's purpose
7 to have anyone who read it believe that; right?

8 A. That would have been one of the purposes, yes.

9 Q. Could you turn to the second page. There Mr.
10 Allen is quoted in the middle of the page as saying,
11 "We also know, and people sometimes forget, that
12 there are some good reasons why the theories about
13 smoking and health problems are often questioned by
14 responsible scientists." Did I read that correctly?

15 A. Yes, you did.

16 Q. And in fact that was a theme that there were
17 questions raised by responsible scientists about the
18 relationship of smoking-and-health problems that
19 appear in many of The Tobacco Institute press
20 releases; right?

21 MR. FLYNN: I object. That's so vague and
22 ambiguous, I don't know how it could be answered.
23 But if you can, answer it.

24 A. Well certainly The Tobacco Institute in its
25 press releases would from time to time quote

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 scientists who -- who expressed views that were
2 contrary to, for example, the Surgeon General's
3 report, or other criticisms of smoking and health.

4 Q. And when you did so, you intended people who
5 would read those statements to believe what you were
6 saying; right?

7 A. Yes, uh-huh.

8 Q. Now Mr. Allen is quoted, going on, to say that
9 "The case against smoking still rests largely on
10 statistical studies, whose meanings are questioned by
11 leading medical statisticians;" right?

12 A. Yes.

13 Q. You intended people to believe that when the
14 Tobacco Institute said it.

15 A. Yes.

16 Q. Okay. And it goes on to say, "Inhalation of
17 tobacco smoke by laboratory animals in many
18 experiments over the years has consistently failed to
19 produce lung cancer;" isn't that right?

20 A. That's what it says, yes.

21 Q. And you intended people reading this press
22 release or stories written from this press release to
23 believe that statement; didn't you?

24 A. Yes, if there were any stories written as a
25 result of the press release.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now the document goes on to quote Mr. Allen to
2 say, "Extensive chemical tests have failed to
3 identify any substance, as found in cigarette smoke,
4 that accounts for lung cancers," isn't that right?

5 A. That's what it says, yes.

6 Q. And in fact it was The Tobacco Institute's
7 intent that people would have confidence in that
8 statement; right?

9 MR. FLYNN: I object, it's now
10 argumentative, but --

11 You've now changed "believed" to "confident,"
12 but --

13 A. Our -- our goal certainly was to present
14 perspectives that we hoped people would listen to,
15 believe. Whether they did or not I think is open for
16 question. But I think that we were entitled to
17 present our viewpoints in an accurate, responsible
18 manner, which we did.

19 Q. So if -- if The Tobacco Institute had
20 information available to it which contradicted any of
21 these statements, it would have wanted to share that
22 information; wouldn't it?

23 MR. FLYNN: That's argumentative, and
24 objectionable on that basis.

25 A. It's certainly --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 That's highly speculative. I just can't imagine
2 that we would regard any information that might run
3 contrary to the industry's views as substantial
4 enough to warrant inclusion in one of our press
5 releases.

6 Q. Well the information that was included in your
7 press releases came from a variety of different
8 sources; didn't it?

9 A. Yes, it probably did. I don't know for certain,
10 but I -- let's say for the sake of argument you're
11 right.

12 Q. All right. Well you would agree that sometimes
13 the information came from published literature;
14 right?

15 A. Scientific literature.

16 Q. Yeah.

17 A. Yes.

18 Q. And sometimes the information came from the
19 companies that made up The Tobacco Institute; right?

20 A. Yes, that would be true.

21 Q. And sometimes the information came from
22 governmental publications; didn't it?

23 A. Yes.

24 Q. Can you think of any other sources?

25 A. Well other tobacco trade sources certainly. I

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 believe you mentioned federal government sources. It
2 could also come from state and local sources,
3 depending on the issue.

4 Q. All right. But you would agree that The Tobacco
5 Institute wanted to try and provide people who heard
6 or read its public statement the true facts about the
7 smoking-and-health issue; correct?

8 A. Well we certainly wanted people to understand
9 what the industry's perspectives were. We thought
10 that there were things they weren't hearing, they
11 weren't understanding. They didn't know what our
12 views were. That was one of the reasons why we spoke
13 out on a number of these subjects.

14 Q. Well didn't The Tobacco Institute specifically
15 say that it wanted to provide the true facts to the
16 public?

17 A. We certainly would provide true facts. Not
18 every single one of them. We certainly would provide
19 true facts to the public.

20 (Plaintiffs' Exhibit 412 was marked
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as
24 Plaintiffs' Exhibit 412, this is another Tobacco
25 Institute press release; isn't it?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Let's see. It appears to be.

2 MR. FLYNN: Just take the time to read it
3 if you want. It's only one page.

4 THE WITNESS: Okay. I was looking at the
5 date.

6 A. All right.

7 Q. You had the opportunity to read Exhibit 412?

8 A. Yes.

9 Q. For the record, the Bates number is 500008079.

10 Now sir --

11 MR. FLYNN: It's an R. J. Reynolds
12 document.

13 Q. It starts out, "TOBACCO INSTITUTE STATEMENT;"
14 doesn't it, sir?

15 A. It does.

16 Q. And then it says, "In response to inquiries,
17 George V. Allen, President of The Tobacco Institute,
18 today issued the following statement," then it sets
19 forth the statement; doesn't it?

20 A. Correct.

21 Q. And that statement includes "The cigarette
22 industry's position, that of thoughtful, responsible
23 consideration of all the questions which have been
24 raised regarding smoking and health."

25 MR. FLYNN: Well you -- objection.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. WIVELL: Let me -- I'm going to
2 withdraw that question.

3 Q. And Mr. Allen said that "The cigarette
4 industry's position has been, and is, that of
5 thoughtful, responsible consideration of all the
6 questions which have been raised regarding smoking
7 and health;" right?

8 A. That's part of the statement, yes, it is.

9 Q. And you understood that that -- that is The
10 Tobacco Institute's position today; isn't it?

11 A. I don't know if it was -- if it's been expressed
12 that way specifically. I'd have to think about it.

13 Q. Well do you believe that The Tobacco Institute
14 does not hold that position today?

15 A. The converse is not necessarily true, as you
16 well know.

17 I think, generally speaking, that would be as
18 true today as it was in 1965.

19 Q. All right. The next sentence -- I'm sorry.
20 Strike that.

21 In the next sentence Mr. Allen says, "The
22 industry will continue forcefully its support of
23 responsible research efforts to establish the true
24 facts;" right?

25 A. That's correct.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And sir, wouldn't you agree that The Tobacco
2 Institute has publicly repeated that from time to
3 time, that they were attempting to establish the true
4 facts concerning the smoking-and-health issue?

5 MR. FLYNN: I object, it's vague and
6 ambiguous and convoluted. I don't know what you're
7 talking about, the industry or the Institute.

8 If you can answer it, you can answer it.

9 A. Well I don't want there to be any -- any
10 confusion because I think this sentence and the way
11 you present it may be subject to some
12 misinterpretation. The Tobacco Institute is not now
13 and never has been a research-funding organization,
14 so we don't fund scientific research. I think there
15 is some possible implication in your question that we
16 do. We don't.

17 The tobacco industry, however, has funded
18 scientific research, is my impression, and that may
19 be what Mr. Allen was referring to.

20 Q. All right. Just so we're clear here, The
21 Tobacco Institute has never had a research director;
22 has it?

23 A. We've never funded research, scientific research
24 on smoking and health, so there wouldn't be a -- a
25 need for us to have someone in charge of research.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And you would agree that The Tobacco Institute
2 has never sponsored or conducted research on
3 cigarettes and cancer.

4 A. To the best of my knowledge we've never done any
5 scientific research of that -- of that sort.

6 Q. And The Tobacco Institute has never sponsored or
7 conducted research on cigarettes and heart disease.

8 A. We've never done any medical research on that
9 subject either.

10 Q. And The Tobacco Institute has never sponsored or
11 conducted research on cigarettes and arterial
12 sclerosis.

13 A. To the best of my knowledge, we've not done or
14 funded research on that subject either.

15 Q. And The Tobacco Institute has never sponsored or
16 conducted research on cigarettes and stroke.

17 A. My answer is the same as that -- with respect to
18 that. I don't believe we've ever done medical
19 research on stroke.

20 Q. And The Tobacco Institute has never sponsored or
21 conducted research on cigarettes and emphysema.

22 A. I don't believe we've ever funded research on
23 that subject either.

24 Q. And The Tobacco Institute has never sponsored or
25 conducted research on cigarettes and chronic

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 obstructive pulmonary disease.

2 A. I don't believe we've conducted or funded

3 research on COPD either.

4 Q. And COPD is the acronym for chronic obstructive
5 pulmonary disease; right?

6 A. Yes, it is.

7 Q. And in fact The Tobacco Institute has never
8 funded or sponsored any study on the health risks of
9 cigarettes; has it?

10 A. We've never done any medical or scientific
11 research on any of the diseases that have been
12 associated with smoking.

13 Q. And The Tobacco Institute has never funded any
14 research on those issues; has it?

15 A. Not to the best of my knowledge.

16 Q. But The Tobacco Institute continued through the
17 '70s, '80s and '90s to provide publications to the
18 public on the issue of cigarettes and smoking and
19 health; didn't it?

20 A. I think that's an incorrect characterization of
21 the timeframe.

22 Q. All right. How would you limit the time?

23 A. I believe that we provided pamphlets and
24 longer-form summaries of our industry's view of
25 smoking-and-health issues, I believe through the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 early to perhaps the mid-'80s.

2 Q. So your problem with my former question was that
3 it's just not done in this -- it has not been done in
4 this decade?

5 A. I am confident we've not done any such
6 publications in the '90s, and it may be more than a
7 decade since we've provided anything along that line.

8 Q. Would it be fair to say that The Tobacco
9 Institute through the '60s, '70s, at least till the
10 mid-'80s, provided publications on the subject of
11 smoking and health to the public?

12 A. We did provide some publications on
13 smoking-and-health issues during that period of
14 time. You know, it wasn't meant to be exhaustive,
15 but it certainly did provide some of the industry's
16 viewpoints on -- on some of the issues of
17 controversy.

18 Q. And when it provided those viewpoints on the
19 issues of controversy, it intended that people who
20 read or heard those viewpoints would believe them.

21 A. We wanted people to read what we had to say. We
22 wanted them to believe what we said. We thought that
23 a full, free and informed discussion of these issues
24 was very much in the public interest.

25 (Plaintiffs' Exhibit 413 was marked

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 for identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked Plaintiffs'
4 Exhibit 413, this is a Tobacco Institute publication;
5 isn't it, sir?

6 A. Yes, it is, I believe.

7 Q. And you can tell that by looking at the last
8 page of the document; can't you?

9 MR. FLYNN: Same last page? What's the
10 last page you have?

11 Okay. That's number 257?

12 THE WITNESS: Yes.

13 A. That's correct, among others.

14 Q. Now the title of this publication is "The
15 cigarette controversy, eight questions and answers;"
16 right?

17 A. Yes, it is.

18 Q. For the record, the Bates number of this
19 document begins at TIMN300233; right?

20 A. Yes.

21 Q. Now this is a publication that The Tobacco
22 Institute provided to the public in the belief that
23 many controversial questions concerning smoking and
24 health must ultimately be answered by further
25 research and new knowledge, and that full, free and

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 informed public discussion was essential in the
2 public interest; correct?

3 A. That's not an exact reading, but it's a summary.

4 Q. Well I essentially paraphrased the statement
5 that's on the second page of Exhibit 413; right?

6 A. Yes. It was a paraphrase, you're correct.

7 Q. And The Tobacco Institute did intend that the
8 information there would inform the public; right?

9 A. Inform the public of our points of view, yes.

10 Q. Okay. Now if you'd turn to the page that ends
11 with Bates number 235.

12 A. Yes.

13 Q. It starts out, "For many adults, cigarette
14 smoking is one of life's pleasures;" right?

15 A. It does.

16 Q. Then it goes on to say, "Does it cause illness--
17 even death? No one knows."

18 A. That is correct.

19 Q. You wanted people who read this publication to
20 believe that; didn't you?

21 MR. FLYNN: I object as argumentative. And
22 it takes one statement. But subject to the
23 objection, answer the question.

24 A. We believed that that statement was fully
25 supported by the text and by the voluminous

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 references which were attached. We thought that
2 people were entitled to hear that information. We
3 hoped they might believe it.

4 Q. Then The Tobacco Institute document goes on to
5 say, "The case against smoking is based almost
6 entirely on inferences drawn from statistics and no
7 causal relation has been actually -- has actually
8 been established;" right?

9 MR. FLYNN: You want him to affirm you read
10 it accurately?

11 A. "...and no causal relationship has actually been
12 established." I believe you dropped a word or two
13 there.

14 MR. FLYNN: What's the question?

15 MS. WIVELL: I'll go back and restate it.

16 Q. And then the -- the document goes on to state,
17 "The case against smoking is based almost entirely on
18 inferences drawn from statistics and no causal
19 relationship has actually been established;" isn't
20 that right?

21 A. Yes. That's part of the statement.

22 Q. All right. And The Tobacco Institute intended
23 people who read that statement to believe it; didn't
24 they?

25 A. Certainly, keeping in mind the fact that it's

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 part and parcel of a larger context with plenty of
2 scientific support as evidenced by the citations.
3 Q. If you'd go on to the next page of the document,
4 there on page six the question is posed: "Does
5 smoking cause disease?" And it's answered. Isn't
6 that right, sir?

7 MR. FLYNN: Well objection. It speaks for
8 itself. It's not answered, but it's commented on.

9 A. The question is, quote, "Does smoking cause
10 disease, question mark. That question is still an
11 open one," close quote.

12 Q. And you would agree that at the time that this
13 document was published, The Tobacco Institute wanted
14 people to believe that the question of whether
15 smoking caused disease was an open question.

16 A. I think the question was an open one according
17 to many people in medicine and science, and we wanted
18 people to know that and understand that. We hoped
19 they'd believe it.

20 Q. It would be reasonable for them to do so;
21 wouldn't it, sir?

22 A. I don't know what is reasonable for people to --
23 for me to expect people to believe, but we certainly
24 hoped that they'd be interested enough in it to read
25 it and hoped they would believe it.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now if you look at page 18 of the document
2 there's a title "Contradiction after
3 contradiction." Do you see that, sir?

4 A. I do.

5 Q. And it goes on to say, "The smoking and health
6 figures are, in fact, a mine of contradictions and
7 paradoxes;" right?

8 A. Yes.

9 Q. Is that a -- was -- I'm sorry, strike that.
10 Was that a true statement at the time it was
11 made?

12 A. Well I would imagine it was. This was 1970, I
13 believe, this document was produced?

14 MR. FLYNN: Somebody pencilled that on the
15 front of the document, but I can't find a date.

16 A. I don't know if that's -- if that's an accurate
17 date or not. We weren't in the habit of putting
18 things in our documents that weren't true at the
19 time.

20 Q. If you turn to page 24, the statement is made
21 there that "...much of the statistical research now
22 used to condemn smoking is flawed, contradictory, and
23 vulnerable to challenge;" right?

24 A. Oh, this third point?

25 Q. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: Where -- what page are you on,

2 20 --

3 A. This is one of the five facts that we're setting
4 forward?

5 That's what it says, yes.

6 Q. And sir, The Tobacco Institute intended anyone
7 who read this statement to believe that much of the
8 statistical research used to condemn smoking was
9 flawed and contradictory and vulnerable to challenge;
10 right?

11 A. We hoped that they'd believe it.

12 Q. If you turn to page 37 of the document, do you
13 see the statement, "What are the tobacco people doing
14 about smoking and health?"

15 A. Yes, I see that.

16 Q. That question is answered in the first statement
17 on page 38; right?

18 A. "A great deal. Far more, in fact, than most
19 people realize..." and so forth?

20 Q. Yes, sir.

21 A. Yes.

22 Q. And that "and so forth" says "The tobacco
23 industry has mounted no publicity campaign about the
24 research it has been supporting with respect to the
25 smoking and health controversy;" right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That's what it says.

2 Q. Now the tobacco industry had mounted a publicity
3 campaign; hadn't it?

4 MR. FLYNN: Well that's argumentative,
5 but --

6 A. I don't -- I don't know if it had anything to do
7 with smoking and health. I don't know what -- what
8 it may have had to do with a statement in this
9 document either.

10 Q. Well sir, we've seen documents here today that
11 show that the tobacco industry formed The Tobacco
12 Institute in order to mount a publicity campaign;
13 didn't we?

14 MR. FLYNN: Objection, it's argumentative.
15 That stuff speaks for itself. If you want to show it
16 to him again, he can affirm that. Whatever it said,
17 it said.

18 A. I -- I can't agree with your statement.

19 MR. FLYNN: I don't think those were
20 Tobacco Institute documents.

21 Q. Well sir, we have seen documents here from the
22 presidents of some of the major tobacco companies who
23 were members of The Tobacco Institute that suggest
24 that The Tobacco Institute was formed to mount a
25 publicity campaign that was pro cigarette; is that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 right?

2 MR. FLYNN: Objection, it's argumentative,
3 it's vague and ambiguous, and the record speaks for
4 itself. It's really inappropriate to ask the witness
5 to recall the testimony.

6 MS. WIVELL: I object to your speaking
7 objections.

8 MR. FLYNN: Well you can object all you
9 want. It's still inappropriate to have a witness
10 recall testimony and affirm your paraphrasing of what
11 prior testimony was. You're at liberty to ask all
12 the questions you want, but that's not an appropriate
13 question. If you want to re-ask it, you've been
14 doing a lot of that, you can re-ask the question.

15 A. If you have a document you'd care to show me,
16 I'd be happy to look at it.

17 Q. Sir, would you get out Exhibit 397. Would you
18 turn to the second page. And under the heading "The
19 Industry's Position," doesn't it say, quote, "They
20 feel that they should sponsor a public relations
21 campaign which is positive in nature and is entirely,
22 quote, pro-cigarettes," close quote?

23 A. Well that -- that's certainly what it says.

24 This --

25 Q. Thank you, sir.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. This document may or may not reflect what
2 actually occurred.

3 Q. Move to strike the non-responsive comments.

4 Sir, isn't it a fact that The Tobacco Institute
5 issued press releases that contradicted statements
6 made by research groups including the American Heart
7 Association on the relationship of smoking and
8 health?

9 MR. FLYNN: Objection, it's argumentative,
10 vague and ambiguous.

11 A. If -- if we did, I'd like to take a look at them
12 if you have them there.

13 Q. You don't recall seeing any in preparation for
14 your deposition today?

15 A. No, I do not.

16 (Plaintiffs' Exhibit 414 was marked
17 for identification.)

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been marked as
20 Plaintiffs' Exhibit 414, this is a document Bates
21 numbered TIKU000009859, but also is Bates numbered
22 TIMN0131089; right?

23 A. Yes.

24 Q. Okay. And this document was issued by The
25 Tobacco Institute; right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: I'm sorry.

2 A. No, it was not.

3 MR. FLYNN: Just --

4 Q. I'm sorry. This was issued by United Feature
5 Syndicate for The Tobacco Institute; correct?

6 MR. FLYNN: Just a moment. I just need to
7 find the document on the list. Just a moment,
8 please.

9 Can you speed it up and tell me what list you're
10 on?

11 MS. WIVELL: It's there.

12 MR. FLYNN: Do you have it?

13 MR. DAVIES: I -- I don't see it. I'm sure
14 it's somewhere, but --

15 MS. WIVELL: Well let's go off the record
16 while you find it.

17 THE REPORTER: Off the record, please.

18 (Discussion off the record.)

19 MR. FLYNN: By my clock, we adjourned at
20 2:05, 2:06; it's now 2:13.

21 MS. WIVELL: Well just for the record, you
22 don't keep the official record, the court reporter
23 does.

24 MR. FLYNN: The problem is that if we get
25 into a fight about the time for reading these things,

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 I just want to have the record made.

2 MS. WIVELL: Well actually I took a
3 bathroom break, and I think I'm allowed to do that.

4 MR. FLYNN: I understand. I just want to
5 show the time. I'm not objecting to any break we
6 take, just the time taken.

7 BY MS. WIVELL:

8 Q. Sir, do you have Exhibit 414 in front of you?

9 A. Ah, yes.

10 Q. All right. And that is a document issued by
11 United Feature Syndicate, Inc. for The Tobacco
12 Institute; correct?

13 A. Not for The Tobacco Institute, I don't believe.
14 I don't know where it says that.

15 Q. Well sir, isn't it a fact that this particular
16 document sets forth the position of the American
17 Heart Association and a rebuttal by William Kloepfer,
18 vice-president of The Tobacco Institute?

19 MR. FLYNN: He needs to look at the
20 document to answer your description, so take the time
21 to look at it.

22 Q. Well sir, doesn't the third paragraph of the
23 first page say, "Now, with February designated as
24 American Heart Month, Dr. Jesse E. Edwards, president
25 of the American Heart Association, presents his views

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 on the subject. William Kloepfer, Jr.,
2 vice-president of The Tobacco Institute, offers a
3 rebuttal in a timely series, CIGARETTES AND HEALTH:
4 A NEW LOOK AT THE EVIDENCE."

5 A. That's what it says. It also says that Dr.
6 Edwards' article was one of three presented by the
7 American Heart Association, and the Institute
8 submitted one article.

9 Q. All right. And that article is found beginning
10 at the page Bates numbered 1101; right?

11 A. I'll have that look where --
12 0131101, yes.

13 Q. All right. And that begins the article provided
14 by The Tobacco Institute; correct?

15 A. That is a portion provided by The Tobacco
16 Institute apparently, yes.

17 Q. Now there is a beginning -- little portion at
18 the bottom of the first page that says, "WHERE
19 THERE'S SMOKE, dot dot, is there a health hazard?
20 The American Heart Association says there definitely
21 is. The tobacco industry asserts that no adequate
22 scientific proof exists to support the claim."

23 A. I'm sorry, I don't know where you are now.

24 Q. Right down here at the bottom of the first page.

25 A. Okay.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: Take the time to read it
2 because she wants you to affirm she's read it right,
3 I guess.

4 A. Yes, that appears to be a promotional device of
5 some sort the Feature Syndicate was using.

6 Q. All right, sir.

7 Well you would agree that The Tobacco Institute
8 essentially asserted from the time it was established
9 in 1957 and -- and asserts today that there is no
10 adequate scientific proof that supports an
11 association between health hazards and smoking.

12 MR. FLYNN: Object.

13 A. No, I would not.

14 Q. So --

15 A. That's improperly phrased.

16 Q. All right. So you would agree that there is an
17 association between health hazards and smoking?

18 MR. FLYNN: Objection, it's argumentative
19 and it's so vague and ambiguous. If you can address
20 it as phrased, do so.

21 A. Again, I don't believe that is an accurate
22 appraisal of our industry position.

23 Q. Well I'm asking you, since you're the
24 spokesperson for The Tobacco Institute here today,
25 does The Tobacco Institute here today believe that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 there is an association between smoking and disease?

2 A. Yes.

3 Q. That there is an association. All right.

4 Now is there scientific proof -- strike that.

5 Today, as you sit here, does The Tobacco
6 Institute believe that there is scientific proof
7 supporting the claim of an association between
8 disease and smoking?

9 A. Well if your question is does The Tobacco
10 Institute believe that it has been scientifically
11 established that smoking causes disease, the answer
12 is no.

13 Q. And sir, that is the position that The Tobacco
14 Institute took back in 1957 when it was initially
15 established; isn't that true?

16 A. Well we were initially established in 1958.

17 Q. I'm sorry. Let me rephrase the question.

18 And that is the position that The Tobacco
19 Institute took back in 1958 when it was initially
20 established; isn't that true?

21 A. Frankly, I don't know what the position was in
22 1958.

23 Q. Sir -- strike that.

24 Sir, does The Tobacco Institute believe that
25 smoking causes disease?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. The Tobacco Institute does not believe that it's
2 ever been established that smoking is causally
3 related to human disease.

4 Q. And sir, that is the position The Tobacco
5 Institute has taken since its formation in 1958;
6 isn't that true?

7 MR. FLYNN: Asked and answered. It's
8 repetitive.

9 A. I -- I can't affirm that.

10 MR. FLYNN: He doesn't know.

11 A. I do not know.

12 Q. Well if we take a look at what was presented in
13 Mr. Kloepfer's paper in Exhibit 414, he made the
14 statement that the role of tobacco in health is still
15 very much in dispute; correct?

16 MR. FLYNN: I object to the context of the
17 question in that it has something to do with '58, but
18 subject to that, answer. And then the document
19 speaks for itself.

20 I may have distracted you from the question. Do
21 you want the question she has pending?

22 THE WITNESS: I don't know what the
23 question was, no.

24 MR. FLYNN: Please re-ask it or repeat it.

25 Q. If we take a look at what was presented in Mr.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Kloepper's paper in Exhibit 414, he made the
2 statement that the role of tobacco in health is still
3 very much in dispute; correct?

4 A. He did, yes.

5 Q. And he goes on to say, "In the words" -- I'm
6 sorry -- "In the recent words of one authority, the
7 evidence is, quote, a complex and hardly consistent
8 picture showing a profusion of inconsistencies and
9 inversions;" right?

10 A. That is correct.

11 Q. Now he also goes on to say at the top of the
12 next page, "Nor does the fact that several of the
13 studies find similar statistical associations
14 constitute proof of any cause-and-effect
15 relationship;" right?

16 A. That is correct.

17 Q. And The Tobacco Institute intended that people
18 who heard Mr. Kloepper's statement would believe
19 them; didn't it?

20 A. Well to be very accurate, they would have read
21 them since this would have been a newspaper
22 distribution. We hoped that people would -- would
23 consider what we had to say and believe it.

24 (Plaintiffs' Exhibit 415 was marked
25 for identification.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 415, this is Bates numbered
4 TIMN0133740; correct?

5 A. Yes, it is.

6 MS. WIVELL: All right. Why don't we go
7 off the record a minute.

8 THE REPORTER: Off the record, please.

9 (Discussion off the record.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as Exhibit
12 415, this is a Tobacco Institute document entitled
13 "Fact or Fancy;" correct?

14 A. Correct.

15 Q. It's Bates numbered TIMN0133740; right?

16 A. Yes, it is.

17 Q. And this is a document that The Tobacco
18 Institute put out that concerns a number of subjects
19 which are listed on the third page of the document;
20 right?

21 A. Yes. There is a table of contents on page
22 three.

23 Q. And among the subjects that are included in this
24 document are a discussion of smoking women, small
25 babies, pregnancy outcome, child growth, effect on

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 children, sex and reproduction, face wrinkles, lung
2 cancer, heart and vascular disease, chronic
3 respiratory disease, amongst others; right?

4 A. That's correct.

5 Q. And in fact a couple of those issues deal with
6 women who smoke during pregnancy; right?

7 A. I believe that's correct, yes.

8 Q. And as a matter of fact there is some
9 information contained in the document beginning at
10 page seven about women who smoke having smaller
11 babies; right?

12 MR. FLYNN: Well objection, it speaks for
13 itself. It's a question.

14 A. Yeah. The question is asked: "Do women who
15 smoke while they're pregnant tend to have smaller
16 babies?"

17 Q. And then the question is answered, too; right?

18 A. There is an answer provided, yes.

19 Q. And the answer is, "Yes, their babies usually
20 weigh less than the babies of mothers who don't
21 smoke;" right?

22 A. And an additional several pages more explaining
23 why that may or may not be.

24 Q. My point precisely. The next several pages
25 concern why that, according to the tobacco industry,

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 may or may not be the case with regard to women who
2 smoke during their pregnancies; right?

3 A. It's a little convoluted, but I think I get the
4 sense of what you're saying.

5 Q. And you would agree that there's information
6 here that suggests that women who smoke have no
7 problem with their -- their pregnancies; right?

8 MR. FLYNN: Again, the document speaks for
9 itself.

10 A. And I don't know that I'm going to agree with
11 that without looking very closely at all of the
12 information that pertains to that issue, which I have
13 not had an opportunity to do.

14 Q. But you would agree that the information that's
15 provided here was information that The Tobacco
16 Institute intended people reading this document to
17 believe; right?

18 A. That is correct.

19 Q. Now among the subjects is the issue of lung
20 cancer on page 27; right?

21 A. Yes, there's a question raised: "Are lung
22 cancer death rates rising more rapidly in women than
23 in men? And is this because more women are said to
24 be smoking?"

25 Q. And the question is answered; isn't it?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. There's an answer provided, yes.

2 Q. All right. And the answer begins with the
3 sentence, "Lung cancer death rates reported for U.S.
4 women have been rising faster year to year than those
5 in men since 1961." Right?

6 A. Right.

7 MR. FLYNN: I object, that's just one
8 sentence of about a page-and-a-half answer, but --

9 Q. And then there is additional information
10 provided that suggests, among other things, that the
11 cigarette smoking may contribute more to the
12 diagnosis of cancer than it does to producing the
13 disease itself in men as well as women; right?

14 MR. FLYNN: I object, it's vague and
15 ambiguous, it speaks for itself. If you could read
16 it to the witness, that would be fine, especially
17 this technical stuff. To paraphrase it, it may well
18 say what you say, I just am uncomfortable with its
19 paraphrase.

20 If you can affirm, she's entitled to have you
21 affirm it. If you need it read, tell her that.

22 MS. WIVELL: I object to your speaking
23 objections --

24 MR. FLYNN: Oh.

25 MS. WIVELL: -- and coaching the witness.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: It's not coaching. It's
2 telling where in this thing it says what you say it
3 says. I'm not coaching him about anything.

4 A. The -- the -- the reference you made certainly
5 is contained within this page of information that
6 comprises -- comprises the answer. There are other
7 things included as well that we've -- we've included
8 for the sake of completeness.

9 Q. Well sir, does it include the information that,
10 during that same period, that the rate of women
11 smokers also increased?

12 A. It does not.

13 Q. But this information was supposedly provided by
14 The Tobacco Institute in the belief that full, free
15 and informed discussion of the smoking controversy
16 was in the public interest; right?

17 MR. FLYNN: Objection, it's argumentative.

18 A. Once again, we provide -- have always provided
19 information to the public from the tobacco
20 industry's perspective. Public certainly was
21 bombarded with information from other sources,
22 anti-tobacco/anti-smoking sources. Certainly wasn't
23 our obligation to present every single facet of -- of
24 the issue. We present the industry's perspective.

25 Q. Well sir, doesn't this document say on the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 second page, and I quote, "In the belief that full,
2 free and informed discussion of the smoking
3 controversy is in the public interest, The Tobacco
4 Institute has assembled the most frequently heard
5 allegations concerning women and smoking -- and
6 created a dialogue encompassing the current
7 scientific knowledge on each point?"

8 A. Yes. And it's self-evident that that's what
9 this document does.

10 Q. But it didn't include in this document the fact
11 that women smokers had increased during the same
12 period that women deaths from lung cancer had
13 increased; did it, sir?

14 MR. FLYNN: Again, the document speaks for
15 itself. You're asking him to affirm a negative in a
16 58-page document -- 62-page document.

17 A. I think -- I think it's clear that this
18 publication of The Tobacco Institute, as well as
19 others, seeks to present the industry perspective on
20 issues. That does not mean that we seek to present
21 every single bit of information about a subject.

22 Q. Sir, I --

23 A. We seek to present the industry's position in
24 the belief that, as it says correctly here, full,
25 free and informed discussion of the smoking

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 controversy is in the public interest.

2 We knew very clearly that the public was
3 receiving substantial amounts of information from
4 anti-tobacco and anti-smoking sources. I don't think
5 anyone would believe that we should include the
6 American Cancer Society's publications in our
7 publications.

8 Q. Well I --

9 A. People were able to receive that information
10 from other sources.

11 Q. I'm sorry, sir. It says here, and I quote, "In
12 the belief that full, free and informed discussion of
13 the smoking controversy is in the public
14 interest...." It doesn't disclose that this is only
15 the tobacco industry's perspective; does it, sir?

16 MR. FLYNN: I object as argumentative in
17 itself. You are arguing with him.

18 A. I think the fact that it says The Tobacco
19 Institute on the facing page would -- would give
20 anyone the idea that this was a tobacco industry/
21 Tobacco Institute document. You shouldn't expect it
22 to include perspectives from anti-tobacco sources.

23 Q. So --

24 A. I think that's -- I don't think that's
25 reasonable.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. So it wasn't reasonable for a reader who read
2 this document to believe The Tobacco Institute was
3 providing, quote, full, free and informed discussion
4 of the smoking controversy in this document, when
5 that's what it said?

6 MR. FLYNN: That's --

7 A. No.

8 MR. FLYNN: -- argumentative.

9 A. That's not what it says.

10 Q. I'm sorry, sir. Doesn't it say, quote, "In the
11 belief that full, free and informed discussion of the
12 smoking controversy is in the public interest, The
13 Tobacco Institute has assembled the most frequently
14 heard allegations concerning women and smoking -- and
15 created a dialogue encompassing the current
16 scientific knowledge on each point?" Doesn't it say
17 that?

18 A. Yes. And it -- it also clearly means that the
19 public's entitled to full, free and informed
20 discussion, and this is part of that discussion.

21 Q. All right. And where does it say we're only
22 giving you The Tobacco Institute's -- I'm sorry,
23 strike that.

24 Where does it say we're only giving you the
25 tobacco industry's perspective here?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I think a reasonable person could look at the
2 cover page and determine that it was a Tobacco
3 Institute document, and from that infer that it was
4 the tobacco industry's position.

5 Q. So when you said "full, free and informed," you
6 didn't mean it; did you?

7 MR. FLYNN: Objection, that's
8 argumentative. He's answered it three times.

9 A. We certainly do mean it. We're very sincere
10 about it. We want people to gather information from
11 as many sources as possible. We will be one of those
12 sources, we hope.

13 Q. Now sir, it says in the immediately preceding
14 paragraph, "Of course you've noticed. It's difficult
15 not to. Women are now the special target of those
16 who would stamp out smoking. And standard
17 unsubstantiated charges have failed, these crusaders
18 are now" --

19 MR. FLYNN: You read it wrong. "...having
20 failed...."

21 MS. WIVELL: I'm sorry. Let me begin
22 again.

23 Q. And then in the immediately preceding paragraph
24 it says, "Of course you've noticed. It's difficult
25 not to. Women are the special target of those who

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 would" --

2 MR. FLYNN: You omitted the word "now."

3 MS. WIVELL: Excuse me, counsel. Why don't
4 you just object.

5 MR. FLYNN: Well you're just going to have
6 to start all over.

7 MS. WIVELL: Fine, I will start all over
8 then.

9 MR. FLYNN: If you read the thing right, we
10 wouldn't have a problem. You read half of these
11 things wrong.

12 Go ahead, read it again, see if it's right. If
13 we wait until the end, you just have to do the whole
14 thing over again.

15 MS. WIVELL: That's fine.

16 MR. FLYNN: Go ahead. Try it again.

17 BY MS. WIVELL:

18 Q. In the immediately preceding paragraph it says,
19 "Of course you've noticed. It's difficult not to.
20 Women are now the special target of those who would
21 stamp out smoking." Have I read it so far
22 correctly?

23 MR. FLYNN: You're correct so far.

24 MS. WIVELL: Excuse me. I truly object.

25 MR. FLYNN: I say you're accurate so far.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. WIVELL: But you're not --

2 MR. FLYNN: You're asking me a sarcastic
3 question because you can't read an English sentence.
4 Go ahead and read the thing. Don't be hostile with
5 me.

6 MS. WIVELL: Mr. Flynn, I am going to make
7 a motion before the court to review your conduct, and
8 I will tell you that I will ask the court to bring
9 Mr. Merryman to Minnesota so that we can complete
10 this deposition under court supervision if we have to
11 because of your conduct in this deposition.

12 MR. FLYNN: Lady, all you're having trouble
13 with is reading an English sentence, and I'm trying
14 to help you and stop you when you got it wrong. Now
15 you're getting hostile about it; that's too bad.

16 MS. WIVELL: That's because you're
17 answering the questions, and I would like the witness
18 to answer the questions, Mr. Flynn.

19 MR. FLYNN: We've long since lost the
20 question struggling with you reading this thing. I
21 mean you're --

22 It's your deposition, ma'am, you do what you
23 want with it.

24 MS. WIVELL: Oh, I'm trying very hard, and
25 I would appreciate it if you would keep your words to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 the word "objection."

2 MR. FLYNN: Well if you'd read the thing
3 properly, we'd move along. I don't know why you have
4 these problems reading these things out loud. Maybe
5 the witness could read it and we'll move along.

6 Look it, lady, you're the one that stopped in
7 the middle and asked me have I read it right?

8 MS. WIVELL: I didn't ask you anything.

9 MR. FLYNN: Read it back in your -- in your
10 computer thing there. Go back to your little -- the
11 screen and you'll find the question that you asked
12 me. And I said, "You're good so far."

13 MS. WIVELL: I didn't ask you any question,
14 Mr. Flynn.

15 MR. FLYNN: Well, if you don't want to look
16 back at it, I can't make you. It has absolutely
17 nothing to do with nothing anyway. But if you want
18 to carry on with this, carry on; otherwise, proceed
19 and ask your question. Try reading this again.

20 MS. WIVELL: Are you done?

21 MR. FLYNN: I was done a long time ago.
22 I'm trying to move this along by helping you read
23 this thing properly.

24 You can stare at me for 15 minutes if you want.
25 It's your time. Let's get on with it.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MS. WIVELL: No, colloquy is not my time.

2 BY MS. WIVELL:

3 Q. Mr. Merryman, the immediately preceding
4 paragraph says, "Of course you've noticed. It's
5 difficult not to. Women are now the special target
6 of those who would stamp out smoking." Have I read
7 it correctly so far?

8 A. You have.

9 Q. Thank you.

10 And it goes on to say, "And standard,
11 unsubstantiated charges having failed, these
12 crusaders are now trying to hit women where they
13 think them to be the most vulnerable -- with threats
14 to their babies and their good looks, and, yes, even
15 their sex lives." Correct?

16 A. Correct.

17 Q. And then it says after that, "In the belief that
18 full, free and informed discussion of the smoking
19 controversy is in the public interest, The Tobacco
20 Institute has assembled the most frequently heard
21 allegations concerning women and smoking -- and
22 created a dialogue encompassing the current
23 scientific knowledge on each point." Correct?

24 A. Correct.

25 Q. Then it gives --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 It says, "Here, then, are some questions about
2 smoking -- and answers, at least where they are
3 known;" correct?

4 MR. FLYNN: Objection. You read it wrong
5 again.

6 A. You did drop a word.

7 Q. All right. Let me rephrase it.

8 And then it says, "Here, then, are some
9 questions about women and smoking -- and answers, at
10 least where they are known."

11 A. Correct, yes.

12 Q. Now it doesn't say at least from the tobacco
13 industry's perspective; does it?

14 A. No. I don't think it's necessary to. That's --
15 that's self-evident.

16 Q. But wouldn't it be fair for a person who
17 thinks -- who reads this and reads that this is a
18 full, free and informed discussion, to have
19 confidence that The Tobacco Institute is providing
20 what it says it's going to provide?

21 MR. FLYNN: Objection, it's argumentative
22 and repetitive the fifth time.

23 A. In my view we have provided what we said we'll
24 provide, questions and answers. No one, I don't
25 believe, could read this document and believe that

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 this was in -- this was intended to be or was all-
2 inclusive of these issues. I -- I don't see how one
3 could reasonably expect that.

4 Q. (Coughing) Pardon me.

5 Would you turn to page 52 of the document.

6 A. All right.

7 Q. That's essentially the last page of text of the
8 document before the reference section; correct?

9 A. I believe it is, yes.

10 Q. And there again The Tobacco Institute claims
11 that "Causality has not been proven in any of the
12 diseases and conditions linked statistically with
13 cigarette smoking -- in men and women;" right?

14 MR. FLYNN: Again you read it wrong, but --

15 A. Well it says, to quote it, "Causality has not
16 been proved in any of the diseases and conditions
17 linked statistically with cigarette smoking -- in
18 women or men. The controversy must be resolved by
19 scientific research.

20 "The tobacco industry does not try to persuade
21 anyone to smoke. Nor does it discourage --
22 discourage anyone who makes up his or her mind to
23 quit. Smoking is an adult custom designed, to be
24 decided by mature, thinking persons -- men or women."

25 Q. And in fact that was the position that The

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Tobacco Institute intended people to believe when
2 they read this -- this document; correct?

3 MR. FLYNN: Objection.

4 A. It --

5 MR. FLYNN: It's vague and ambiguous. If
6 you know what "position" is, go ahead.

7 A. This was one of our positions.

8 Q. And it was one of the positions that you
9 intended people to believe when they read this
10 document; isn't it, sir?

11 A. Well yes. I mean it was -- it wasn't a matter
12 of opinion, it was a position The Tobacco Institute
13 took.

14 Q. Now from time to time The Tobacco -- The Tobacco
15 Institute would take out ads concerning the issue of
16 smoking and health; wouldn't it?

17 A. I don't know how often that was undertaken. I
18 don't think very often. And I don't believe in the
19 years I've been there we have done any advertising on
20 smoking and health.

21 (Plaintiffs' Exhibit 416 was marked
22 for identification.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as Exhibit
25 416, this is a Tobacco Institute ad that was taken

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 out entitled "The question about smoking and health
2 is still a question;" right?
3 A. Got a better copy? Mine is blanked out.
4 Q. That's what I have, too.
5 A. Well --
6 MR. FLYNN: He can't tell. That's the
7 answer. If you can tell, tell her.
8 A. Part of the -- part of the headline is
9 obliterated in this copy, and I can't tell that
10 that's exactly what it says.
11 Q. All right. The Bates number of this is
12 TIMN0081352; correct?
13 A. Yes, it is.
14 Q. All right. Now it --
15 At the end of this document there is a box which
16 has a quote in it; right?
17 A. Yes, there is.
18 Q. And it says, "These facts and statements are
19 presented by The Tobacco Institute in the belief that
20 the many controversial questions concerning smoking
21 and health must ultimately be answered by further
22 scientific research and new knowledge -- and that
23 full, free and informed public decision -- discussion
24 is essential in the public interest." Correct?
25 A. Correct.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. All right. Have you read this document in
2 preparation for your deposition today?

3 A. It is familiar to me. I believe I have.

4 Q. Okay. You would agree that this document sets
5 forth the -- the position of The Tobacco Institute,
6 that the question about smoking and health is still a
7 question; right?

8 MR. FLYNN: Again the document speaks for
9 itself, but subject to that --

10 A. It -- it set forth a 1970 position.

11 Q. Well, and that's the position that The Tobacco
12 Institute holds today; isn't it?

13 A. I'll have to read the entire document to make
14 certain.

15 Q. Well my question was about the position that The
16 Tobacco Institute had about smoking and health still
17 being a question.

18 A. There certainly are continuing questions about
19 the relationship between smoking and health, if
20 that's your question, yes.

21 Q. And sir, you would agree that in 1970, when The
22 Tobacco Institute took out this ad, it intended
23 people to believe what it said in the ad; right?

24 A. We hoped people would believe what we had to
25 say, yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. All right. And as a matter of fact, would you
2 take out this ad today?

3 A. I don't have any idea.

4 Q. Well as the director of communications for The
5 Tobacco Institute, would you recommend taking out an
6 ad like this one today?

7 A. Well that's not part of my -- my job
8 responsibility. Wouldn't ever occur to me to make a
9 recommendation for or against such advertising.

10 Q. Now essentially this document says that the
11 question of a causal relationship of smoking and lung
12 cancer, coronary heart disease, or emphysema, is
13 still just a question; doesn't it?

14 MR. FLYNN: Again, objection, it speaks for
15 itself. If there's a phrase or statement you're
16 quoting --

17 Do you see where she's quoting? If you do, you
18 can affirm it.

19 THE WITNESS: I don't yet.

20 MR. FLYNN: Can you focus the witness on
21 where you are?

22 Q. Sir, isn't that the essential message that this
23 ad puts forth?

24 MR. FLYNN: I object, the thing speaks for
25 itself.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Really, the -- the -- the advertisement seems to
2 be devoted mostly to a recitation of the amount of
3 research that the tobacco industry has funded in an
4 attempt to find answers to the scientific questions
5 that have been raised about smoking and health.

6 Q. And doesn't it in the second paragraph say, "So
7 far, in spite of this massive effort, there are
8 eminent scientists who question whether any causal
9 relationship has been proven -- proved between
10 cigarette smoking and human disease -- including lung
11 cancer, coronary heart disease, or emphysema?"

12 A. That is correct, it says that.

13 Q. And sir, that was the position of The Tobacco
14 Institute in 1970, that no causal relationship has
15 been proved between cigarette smoking and human
16 disease, including lung cancer, coronary heart
17 disease, or emphysema; right?

18 MR. FLYNN: I object as argumentative.
19 It's also repetitive.

20 A. What the advertisement says is accurately
21 reflective of the tobacco industry's beliefs at the
22 time.

23 Q. All right. Let me ask you about today. Could
24 that --

25 Would that statement that I just read accurately

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 reflect the tobacco industry's position today?

2 A. Well our position today is that no causal
3 relationship has been proven between smoking and any
4 of the diseases with which smoking has been
5 associated statistically.

6 Q. Including lung cancer, coronary heart disease,
7 and emphysema; right?

8 A. That would include lung cancer, coronary heart
9 disease, and emphysema, among others.

10 Q. And in fact that is the message that The Tobacco
11 Institute has communicated essentially from 1970 to
12 the present in public statements that it has made
13 concerning the issue of smoking and -- causing
14 disease; right?

15 A. As long as --

16 As long as we understand that that's not the
17 only issue the tobacco industry has been involved in
18 addressing, that's correct.

19 Q. And when The Tobacco Institute made those
20 statements over the period of years, it intended
21 people to believe what it said; didn't it?

22 A. We certainly hoped that the people would believe
23 what we had to say. We were sincere in those beliefs
24 and felt that people deserved to understand what our
25 perspectives were.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now sir, The Tobacco Institute took exception to
2 the various reports that were issued by the Surgeon
3 General on the issue of smoking and health; didn't
4 it?

5 A. We certainly took exception to some of the
6 conclusions that were reached by some of the Surgeon
7 General's reports. I don't think we quarreled with
8 every single thing that was in a document issued by
9 the Surgeon General.

10 Q. Well didn't The Tobacco Institute at one time
11 take the position that the 1972 report of the Surgeon
12 General insults the scientific community?

13 A. I don't recall that specifically.

14 (Discussion off the stenographic record.)

15 (Plaintiffs' Exhibit 417 was marked
16 for identification.)

17 BY MS. WIVELL:

18 Q. Sir, showing you what's been marked as Exhibit
19 417, it is a document Bates numbered TIMN0120602;
20 correct?

21 A. Correct.

22 Q. And it is a press release from The Tobacco
23 Institute dated February 26th, without a year; right?

24 A. Without a year, correct. February 26th.

25 Q. Okay. And it refers to the 1972 report of the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Surgeon General to Congress on smoking and health;
2 right?

3 A. It does.

4 Q. And it claims that that report, quote, insults
5 the scientific community, close quote; doesn't it?

6 MR. FLYNN: Again it speaks for itself,
7 but --

8 A. That's what it says.

9 Q. And by the way, the quote is attributed to R. C.

10 B. Ehringhaus, Jr., vice-president and counsel for
11 the Washington-based Tobacco Institute; right?

12 A. J. C. B. --

13 Q. -- I'm sorry.

14 A. -- Ehringhaus, Jr.

15 Q. And am I pronouncing it correctly, Ehrhaus --
16 Ehringhaus?

17 A. Ehringhaus. Yes, ma'am.

18 Q. Mr. Ehringhaus; was it?

19 A. Yes.

20 Q. And Mr. Ehringhaus was, at the time this
21 statement was made, vice-president to The Tobacco
22 Institute?

23 A. If -- if this was 1972, as it seems to be, I
24 don't know. I mean I wasn't there then.

25 Q. Okay. You have no reason to believe that this

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 press release is inaccurate; do you?

2 A. I can't say "yes" or "no." I mean it's before
3 my time.

4 Q. Mr. Ehringhaus is then quoted as saying, "the
5 number one health problem is not cigarette smoking,
6 but is the extent to which public health officials
7 may knowingly mislead the American public." Right?

8 A. Yes.

9 Q. Now the press release goes on to claim that the
10 Surgeon General ignores by misrepresentation the
11 researchers whose contrary findings he chooses to
12 omit from the report; correct?

13 A. Yes, that's what it says.

14 Q. And sir, you would agree that when The Tobacco
15 Institute published this press release, it intended
16 people in the United States who may hear it or read
17 it to believe what The Tobacco Institute was saying;
18 right?

19 A. We hoped they would believe what we were
20 saying.

21 What distribution this got, I have no idea if it
22 even went out.

23 Q. You have no way of knowing that it didn't go
24 out; do you?

25 A. I can't establish whether it was ever issued.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. You just don't know one way or the other as you
2 sit here today; right?

3 A. That is correct.

4 MR. FLYNN: Done with that one.

5 Q. Sir, earlier in the deposition we saw a copy of
6 a publication called "THE SMOKING CONTROVERSY." Do
7 you recall that generally?

8 A. Where do we have that?

9 "THE CIGARETTE CONTROVERSY," did you say?

10 MR. FLYNN: Do you have the exhibit number?

11 Q. I was just wondering if you recollected it.

12 "THE CIGARETTE CONTROVERSY," yes.

13 A. I have it here (referring to Exhibit 406).

14 Q. All right. Now The Tobacco Institute some years
15 later, after "THE CIGARETTE CONTROVERSY" was
16 published, published another booklet to be
17 disseminated to the public entitled "The Smoking
18 Controversy: A Perspective;" correct?

19 A. I believe I recommend -- recall that, yes.

20 (Plaintiffs' Exhibit 418 was marked
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as Exhibit
24 418, this is another booklet that was published by
25 The Tobacco Institute concerning the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoking-and-health issue; right?

2 MR. FLYNN: Just for -- I assume the notes
3 on page one are not part of it?

4 MS. WIVELL: This is the way it was
5 produced to us.

6 MR. FLYNN: All right.

7 Do you have the question in mind?

8 THE WITNESS: Yes. Do you have a
9 question? I'm sorry, I --

10 MS. WIVELL: I'll rephrase it.

11 Q. Showing you what's been marked as Exhibit 418,
12 this is a draft of a booklet that was published by
13 The Tobacco Institute concerning the
14 smoking-and-health issue, right?

15 A. It -- it must be a draft because there are
16 correction marks in it.

17 Q. But you understand that the booklet was
18 eventually published, right?

19 A. That's my recollection, yes.

20 Q. All right. Now if you turn to the first page,
21 at the -- I'm sorry, the second page, the bottom, it
22 says, "This paper is published by The Tobacco
23 Institute in the belief that public discussion about
24 tobacco -- tobacco smoking is in the public interest,
25 and that the smoking controversy must be resolved by

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 scientific research." Right?

2 A. That is correct.

3 Q. Now this is another very long document. It's
4 one that The Tobacco Institute provided to the public
5 in the hopes that the reader would believe the
6 statements made in the document; right?

7 MR. FLYNN: Well I object, it's
8 argumentative, without foundation. If -- but if you
9 can answer, go ahead.

10 A. Well again, it's another one of our -- our
11 documents which set forth our views on a number of
12 controversies. We hoped, certainly, it would
13 contribute to public understanding and that people
14 would -- would accept what we had to say here.

15 Q. And among the messages that is put forth in this
16 document is that the case against smoking is not
17 closed; is it?

18 MR. FLYNN: Can you focus the witness on a
19 phrase or page or something?

20 A. Is that on a particular page?

21 Q. You don't recall particularly that message being
22 in this document?

23 A. Well it may or may not be. I mean it's a
24 30-page document with 87 references.

25 Q. All right. Let me see if I can find it.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 THE REPORTER: We have to change tape. Off
2 the record, please.

3 (Discussion off the record.)

4 BY MS. WIVELL:

5 Q. Sir, at the bottom of page three of the
6 document, the page that ends with Bates numbers 572,
7 there is a notation that "This paper will develop and
8 document the following points;" correct?

9 A. That is correct.

10 Q. All right. And if we turn to the top of the
11 next page, the second point is that "Many health
12 agencies have created the myth that the case against
13 smoking is closed;" right?

14 MR. FLYNN: Objection, part of point two.

15 But if you want him to confirm you read it --

16 A. You -- you've read that portion of it correctly.

17 Q. And then it goes on to say, "However, their
18 conclusions are based largely on statistical
19 associations, the interpretation of which has been
20 questioned by leading epidemiologists;" right?

21 A. That is correct.

22 Q. Okay. Now The Tobacco Institute, when it
23 published this booklet, intended the -- the person
24 that read it to believe what was being said there.

25 A. We certainly hoped that people would read and

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 accept what was there, and -- and believe it.

2 Q. All right.

3 A. That's correct.

4 Q. Now if we go back to the page three of the
5 document, at the top there is a statement that "No
6 one knows the root cause or causes of cancer;" is
7 that right?

8 MR. FLYNN: Where are you at? Page --

9 MS. WIVELL: The top of the page -- the
10 page Bates numbered three.

11 THE WITNESS: Same page?

12 MS. WIVELL: Yes, sir.

13 MR. FLYNN: Second paragraph.

14 A. Yes, that is correct, that's what it says.

15 Q. All right. Let me --

16 Because that's a little bulloxed up there, let
17 me just re-ask the question.

18 And at the top of page three of this document
19 there is a statement that, quote, "No one knows the
20 root cause or causes of cancer;" correct?

21 A. That is what it says, correct.

22 Q. And The Tobacco Institute then provided a
23 variety of different information that they used to
24 back up that claim; right?

25 MR. FLYNN: Again objection, it's

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 argumentative, it speaks for itself.

2 A. No, I'd -- I'd have to look through this a
3 little more closely to answer it directly, your
4 question.

5 Q. Well there's a variety of information provided
6 following that general statement in numbered
7 paragraphs that begin at one and continue on the next
8 page up to 10; right?

9 A. Yes, that is correct.

10 Q. And these statements were statements that The
11 Tobacco Institute made and intended the public to
12 believe; right?

13 MR. FLYNN: Again I object to the form as
14 argumentative. I don't know how you believe these
15 things as much as they're statements, but --

16 A. I'm not certain that all of these are
17 necessarily Tobacco Institute statements. I believe
18 there are references to other authorities. Well
19 these --

20 You know, this was part of the paper,
21 obviously. Says, "This paper will develop and
22 document the following points," one through 10.

23 Q. Now sir, at the end of this document on page 22
24 there is an issue raised about whether health
25 agencies are believable; right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I see that.

2 Q. And sir, doesn't it liken the American Cancer
3 Society and the American Heart Association and the
4 American Lung Association to the Salem witch trials?

5 MR. FLYNN: I object as argumentative, and
6 the document speaks for itself. I think this is
7 something, if you want to read it in, it should be
8 read rather than have the witness affirm your
9 interpretation of it. It clearly speaks for itself.

10 A. Well there's a reference to the Salem witch
11 trials in the first sentence. However, I think that
12 it's very clear that what this attempts to do is
13 to -- is to elucidate how some of the voluntary
14 health associations are spending their funds with
15 respect to smoking-and-health research.

16 Q. Well sir, the paragraph starts out, "As in the
17 Salem witch trials, a segment of society is acting on
18 the basis of emotion when it mistakenly thinks it has
19 the facts;" right?

20 A. That's the first sentence of several paragraphs,
21 yes.

22 Q. And then the last sentence of that same
23 paragraph goes on to say, quote, "A witch trial of
24 smokers, whether it threatens public welfare or not,
25 gets public attention, inflames the passions of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 volunteer fund racers and produces big budgets and
2 oversized reserves in such private agencies as the
3 American Cancer Society, the American Heart
4 Association and the American Lung Association;"
5 correct?

6 A. That is a correct reading of that -- of that
7 sentence.

8 Q. Now sir, isn't it true that The Tobacco
9 Institute intended to liken the American Cancer
10 Society, the American Heart Association and the
11 American Lung Association with the Salem witch
12 trials?

13 MR. FLYNN: Objection, it's argumentative.
14 Again this speaks for itself. If you find that in
15 there, fine.

16 You can answer the question.

17 A. I think what this section does is speaks to the
18 emotional situation that surrounds the smoking
19 controversy. And I don't think there is an intent,
20 and I don't draw it from here, that somehow the
21 voluntary health associations can be compared
22 themselves to the Salem witch trials.

23 Q. So then the answer to my question is no then;
24 right?

25 MR. FLYNN: Well the answer is what he just

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 said.

2 A. The answer is what I provided you.

3 Q. Sir, isn't it a fact that the tobacco industry
4 has claimed for years that millions of research
5 dollars and decades of investigation have failed to
6 establish a causal link between cancer and cigarette
7 smoke?

8 MR. FLYNN: Again, objection as vague and
9 ambiguous and argumentative.

10 A. Well let me say that the tobacco industry has
11 for a long time believed that it's necessary to
12 research the issues surrounding tobacco use and
13 health. We continue to believe so today.

14 Q. I understand. But my question is a little bit
15 different. Isn't it true that The Tobacco Institute
16 has said that despite millions of research dollars
17 and decades of investigation, there has been a
18 failure to establish a causal link between smoking
19 and cancer?

20 MR. FLYNN: Same objection, but --

21 A. If that's in a document someplace where The
22 Tobacco Institute says it, I'd like to see it. I
23 don't specifically recall it.

24 Q. Who is Sam Chilcote?

25 A. Sam Chilcote is the president of The Tobacco

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Institute.

2 (Plaintiffs' Exhibit 419 was marked
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as Exhibit
6 419, this is a document Bates numbered TIMN277294;
7 correct?

8 A. That is correct.

9 Q. And it is a Tobacco Institute press release
10 dated February 11th, 1982.

11 A. That is correct.

12 Q. And it quotes Sam Chilcote, the president of The
13 Tobacco Institute; doesn't it?

14 A. It does.

15 Q. And it claims that millions of research dollars
16 and decades of investigation have failed to establish
17 a causal link between cancer and cigarette smoke;
18 right?

19 MR. FLYNN: Objection, it's an incomplete
20 statement of the statement.

21 A. As far as it goes, that is correct. It's not
22 the entire sentence.

23 Q. Then it goes on to say that that statement is
24 made according to a review of scientific studies just
25 published by The Tobacco Institute.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That is correct.

2 Q. And the studies that were referred to are in a
3 report entitled "Cigarette Smoking and Cancer: A
4 Scientific Perspective;" right?

5 A. Well the review is that named document. The
6 studies themselves would not be included except by
7 reference.

8 Q. All right. So basically what the tobacco
9 industry -- I'm sorry, let me -- let me begin again.
10 Basically, what The Tobacco Institute had done
11 was publish another booklet, report, entitled
12 "Cigarette Smoking and Cancer: A Scientific
13 Perspective," right?

14 MR. FLYNN: Object as argumentative, the
15 "basically what they've done," but --

16 A. We -- we published this -- this review which is
17 mentioned in the news release, that's correct.

18 Q. And the news release goes on to note that -- the
19 repeated failure of animal smoke inhalation
20 experiments to produce the type of lung cancer most
21 frequently associated with cigarette smoking; right?

22 A. News release points out that that's one of the
23 points made in the -- in -- in the review.

24 Q. And then Mr. Chilcote is quoted, quote, "While
25 many people believe that a causal link between

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoking and cancer is a given, scientific research
2 has not been able to establish that link nor has it
3 been able to determine how normal cells become
4 cancerous;" right?

5 A. That is correct.

6 Q. And in fact it was the intention of The Tobacco
7 Institute in issuing this press release that people
8 would believe that scientific research had not been
9 able to establish a causal link between smoking and
10 cancer; right?

11 A. Actually I believe, more to the point, our
12 reason for issuing this release was to call attention
13 to the review itself, not necessarily the release and
14 its conclusions, and hope that people would read --
15 would read the entire review.

16 Q. All right. Well sir, my question refers to the
17 one statement that Mr. Chilcote has referred to in
18 this quote --

19 A. Uh-huh.

20 Q. -- concerning the causal link between smoking
21 and cancer as being unproven. At the time this
22 statement was made, The Tobacco Institute intended
23 people to believe that there was no relationship
24 between a -- no causal relationship between smoking
25 and cancer; right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: Objection, it's argumentative.

2 It says what it says. It isn't quite what you say.

3 A. We believed that people would be interested in
4 this information. We hoped they'd accept it, look at
5 it, read it, believe it. I don't know how successful
6 we were. But we certainly thought that this was an
7 important and interesting review of some of the
8 scientific literature.

9 Q. And on the second page, the press release goes
10 on to claim that while statistical associations may
11 raise valid questions and possibly -- I'm sorry. Let
12 me start again.

13 And on the second page of the press release, the
14 claim is made that while statistical associations may
15 raise valid questions that suggest possible leads for
16 further research, they do not prove a
17 cause-and-effect relationship; right?

18 A. That is correct. It says that.

19 Q. And you intended -- I'm sorry.

20 And The Tobacco Institute intended people to
21 believe that when they said it; didn't they?

22 A. We hoped people would believe what we had to
23 say, as anyone would.

24 Q. Now sir, from time to time, in addition to
25 sending out press releases and publishing booklets

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 and taking out ads, you'd appear in the media and
2 give interviews and make public statements about
3 smoking and health; right?

4 MR. FLYNN: That's repetitive. You covered
5 that this morning.

6 A. If we were asked for our positions on something,
7 we certainly tried to respond.

8 Q. You've been on Nightline; haven't you?

9 A. I have been on Nightline myself.

10 Q. Okay. And as a matter of fact, when you were on
11 Nightline you claimed that it was not known whether
12 cigarettes caused cancer; right?

13 MR. FLYNN: Again I object as vague and
14 ambiguous. If you remember what you said --

15 A. I don't recall that specific statement.

16 Q. I'm sorry, let me withdraw that question. Why
17 don't we do it this way. You understand --

18 You understand that there was a transcript made
19 of your Nightline interview; right?

20 A. Do I understand it? That's possible, I guess.

21 Q. How many times have you been on Nightline?

22 A. I don't know. Honestly. More than once, but
23 less than a dozen.

24 (Plaintiffs' Exhibit 420 was marked
25 for identification.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as Exhibit
3 420, this is a document Bates numbered 502371212;
4 correct?

5 A. Yes, it is.

6 Q. And it concerns a Nightline interview done on
7 February 2nd, 1984; right?

8 A. Yes.

9 Q. And you participated in that interview; didn't
10 you, sir?

11 A. Well let me see.

12 MR. FLYNN: Page three I think it starts.

13 A. Yes, I am at least quoted in here.

14 Q. All right. Also quoted in here is Edward
15 Horrigan, chair of RJR Tobacco; right?

16 A. That is correct.

17 MS. WIVELL: All right. Could we take a
18 break, please.

19 THE REPORTER: Off the record, please.

20 (Recess taken.)

21 BY MS. WIVELL:

22 Q. Sir, in this Nightline interview that's Exhibit
23 420, Mr. Horrigan from R. J. Reynolds Tobacco makes
24 some statements about cigarette smoking and cancer;
25 correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Where -- where are we in the -- in the -- in the
2 text?

3 Q. The bottom of page five.

4 A. All right.

5 Q. There it says Ted Koppel asked him, "Cigarette
6 smoking does not cause cancer, yes or no?" And then
7 Horrigan says, "It is not known whether cigarettes
8 cause cancer." Right?

9 A. He says that, correct.

10 Q. All right. And, sir, that was the position that
11 The Tobacco Institute had at the time of this
12 interview in 1984 also.

13 A. Not precisely. The Tobacco Institute's view was
14 that it had not been scientifically established that
15 cigarette smoking was causally related to lung
16 cancer.

17 Q. All right. Now Mr. Horrigan also goes on to
18 respond to Mr. Koppel with -- about some questions
19 having to do with cigarette smoking and emphysema;
20 correct?

21 A. Well Mr. Koppel --

22 Let's, you know, read what Mr. Koppel says.

23 Q. He says "Smoking" --

24 A. Mr. Koppel mentions emphysema.

25 Q. Yes. And says he says, "Cigarette smoking - no

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 causal relationship between cigarette smoking and
2 emphysema." And Horrigan says, "Despite all of the
3 research to date, there has been no causal link
4 established." Right?

5 A. That's what --

6 MR. FLYNN: Objection, there's no
7 foundation that this witness --

8 Again, go ahead, answer the question. There is
9 no foundation as to this witness.

10 A. That's what Mr. Horrigan is quoted as saying in
11 this transcript, yes.

12 Q. Was that also the position of The Tobacco
13 Institute, that there had been no causal link
14 establishing smoking and emphysema?

15 A. Well The Tobacco Institute's position has been
16 there is no scientific demonstration that there's a
17 causal relationship between cigarette smoking and
18 emphysema, that's correct.

19 Q. Now Ted Koppel also went on to ask Mr. Horrigan
20 about the relationship between smoking and heart
21 disease; right?

22 A. He asked about the -- if there was any causal
23 relationship between cigarette smoking and heart
24 disease, according to this transcript, yes.

25 Q. And Mr. Horrigan said, "No. As a matter of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 fact, there are studies that while we are accused of
2 being associated with heart disease, there have been
3 studies conducted over 10 years that would say,
4 again, that science is puzzled over these forces."
5 Right?

6 MR. FLYNN: Again, I object. You omitted a
7 word. "...still puzzled."

8 A. That's -- that's what the transcript says, yes.

9 Q. And what was The Tobacco Institute's position in
10 1984 on the relationship of -- of smoking and heart
11 disease?

12 A. That our position, The Tobacco Institute's
13 position, was that cigarette smoking was
14 statistically associated with heart disease, but
15 there had been no scientific demonstration that it
16 was a causal relationship.

17 Q. Now The Tobacco Institute also disagreed with
18 the judgment of the Surgeon General's report that
19 cigarette smoking was an established cause of chronic
20 bronchitis; isn't that true?

21 MR. FLYNN: Objection, it's argumentative,
22 vague and ambiguous, overbroad.

23 A. I don't know what Surgeon General's report
24 contained that claim.

25 (Plaintiffs' Exhibit 421 was marked

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 for identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as
4 Plaintiffs' Exhibit 421, this is a document Bates
5 numbered TIMN319476; correct?

6 A. That is correct.

7 Q. Now it's a Tobacco Institute document entitled
8 "Cigarette Smoking and Chronic Obstructive Lung
9 Disease: The Major Gaps in Knowledge;" right?

10 A. That is correct.

11 Q. And if we were to turn to page two of the
12 document, do you see at the bottom of the page that
13 the tobacco industry has not agreed with the judgment
14 of the Surgeon General's report that cigarette
15 smoking has been established as a cause of chronic
16 bronchitis?

17 A. Yes, that is -- that's what the document says.

18 Q. All right. That was The Tobacco Institute's
19 position at the time it issued this press release;
20 correct?

21 A. Well this is not specifically a press release,
22 it is a document in itself.

23 Q. Fair enough. Let me restate the question.

24 At the time this document was issued, that was a
25 position that The Tobacco Institute took on the issue

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of cigarette smoking as a cause of chronic
2 bronchitis; right?

3 A. That is correct.

4 Q. All right. And that position is further
5 enunciated with the claim that a causal relationship
6 between smoking and other chronic bronchitis --

7 MR. FLYNN: Objection.

8 Q. -- or emphysema has not been established
9 scientifically; right?

10 MR. FLYNN: Objection. You read it wrong,
11 you said "other" instead of "either."

12 Q. Let me rephrase the question.

13 And then The Tobacco Institute document goes on
14 to say, "A causal relationship between smoking and
15 either chronic bronchitis or emphysema has not been
16 established scientifically;" right?

17 A. That is our statement, yes.

18 Q. And you intended -- I'm sorry, strike that.

19 And The Tobacco Institute intended people to
20 believe what it said there; right?

21 A. We certainly hoped they believed what we said in
22 this and other documents on many different subjects.

23 Q. And that's because up till today The Tobacco
24 Institute has taken the position that the issue of
25 smoking and health remains one of controversy;

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 right?

2 MR. FLYNN: I object, it's vague and
3 ambiguous and so overbroad.

4 A. That's -- that's not why we hoped people would
5 accept and believe what we published in this and
6 other documents. We certainly do believe that a
7 controversy exists about smoking and health. Those
8 are two separate matters.

9 Q. Sir, isn't it true that there is no controversy
10 concerning the causal link between smoking and
11 certain diseases?

12 MR. FLYNN: Objection, it's just
13 argumentative.

14 A. I believe and The Tobacco Institute believes
15 that there is a controversy with respect to smoking
16 and health.

17 Q. Do you know who F. J. C. Roe is?

18 A. I don't believe I do.

19 Q. You don't recognize that name as a person who is
20 a consultant to British-American Tobacco Company on
21 issues relating to smoking and health?

22 A. No, I don't believe so. B.A.T. is not a member
23 of the Institute.

24 Q. I -- I understand. But their wholly-owned
25 subsidiary Brown & Williamson is; isn't that true?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes. They're separate entities, as I understand
2 it.

3 (Plaintiffs' Exhibit 422 was marked
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as
7 Plaintiffs' Exhibit 422, this is a document produced
8 in this litigation by BATCO, British-American Tobacco
9 Company, dated May 4th, 1982; right?

10 A. That is correct.

11 Q. For the record, the Bates number is 100432193.
12 That's the beginning; right?

13 A. Yes.

14 Q. Would you turn to the second page of the
15 document. I -- I'm sorry. Let's go back to the
16 first page.

17 The first page is a letter from Francis J. C.
18 Roe to Ray E. Thornton, Group Research & Development
19 Center, British-American Tobacco Company Limited;
20 correct?

21 A. That is correct.

22 Q. If you'd turn to the second page of the
23 document, there Mr. Roe makes the statement, "It is
24 not really true, as the American Tobacco Industry
25 would like to believe, that there is a raging

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 worldwide controversy about the causal link between
2 smoking and certain diseases." Have I read
3 correctly?

4 A. You have.

5 Q. And he goes on to say, "Common sense based on
6 overwhelming circumstantial evidence is enough, in
7 the case of, say, the influence of smoking on lung
8 cancer risk - not to prove causality (since proof of
9 causal link is elusive for all diseases) - but enough
10 to render the matter not one of major 'world wide
11 controversy' and certainly not one in which the two
12 sides of the issue are evenly balanced." Correct?

13 A. That is what he says, yes.

14 Q. Now The Tobacco Institute never provided
15 information that the claimed controversy was really
16 not a balanced one; did it?

17 MR. FLYNN: I object. It's just
18 argumentative, without foundation, using a document
19 of another company. But you can answer the question.

20 A. Would you mind repeating the question?

21 Q. Certainly.

22 Now The Tobacco Institute never provided the
23 information contained in this document in its attempt
24 to provide full disclosure to the American public on
25 the issue of the smoking and health, so-called

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 controversy; did they?

2 MR. FLYNN: I object, it's so vague and
3 overbroad. And you're referring to the whole
4 document in your question.

5 If -- if you can answer it as phrased, do so.

6 A. Well it's -- let --

7 Let me say, first of all, that our attempt was
8 never to provide, as you put it, full disclosure of
9 all of the issues surrounding the smoking-and-health
10 controversy. Clearly we were interested in
11 presenting the industry's perspectives. If some
12 people disagreed with those perspectives, that's --
13 that's their right, even if some of those people
14 happen to be consultants to a British firm. That
15 does not have any impact, in my view, on the fact
16 that people in the medical and scientific community
17 in this country and others thought there were
18 controversies surrounding the smoking-and-health
19 issue.

20 Q. But it is clear, isn't it, sir, that The Tobacco
21 Institute never provided the information contained in
22 the first paragraph of the second page of this
23 exhibit in any of the press releases that they sent
24 out; right?

25 MR. FLYNN: I object, it's pure argument.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Just contorts this document.

2 A. I don't know how we would have been expected to
3 know if this document existed. It clearly wasn't
4 addressed to anyone at The Tobacco Institute nor to a
5 member of The Tobacco Institute.

6 Q. So the answer to my question is no, that
7 information wasn't provided in any of the public
8 statements that The Tobacco Institute made concerning
9 the issue of smoking and health; right?

10 MR. FLYNN: Same objection, it's
11 argumentative, it's vague and ambiguous.

12 A. I believe my answer is as I've stated it.

13 Q. Sir, Mr. Roe goes on to call the book that he
14 was reviewing on smoking and health a mixed marriage
15 between traditional American lawyer exhaled gas and
16 discretely coughed-up Anglo-Saxon phlegm; doesn't he?

17 A. I'm looking for the --

18 MR. FLYNN: Page you're on.

19 A. Are we still on the same page?

20 Q. No. Could you turn to the page that ends with
21 Bates number 198.

22 A. I -- I see that. I've got no idea what he's
23 talking about.

24 Q. Well sir, R. J. Reynolds was a member of The
25 Tobacco Institute; wasn't it?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes.

2 Q. And isn't it true that R. J. Reynolds had
3 identified carcinogenic substances in tobacco even
4 before The Tobacco Institute was set up?

5 MR. FLYNN: Objection, there's no
6 foundation.

7 A. I wouldn't know.

8 Q. All right.

9 (Plaintiffs' Exhibit 423 was marked
10 for identification.)

11 MR. FLYNN: Let the record reflect this is
12 very difficult to read.

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as Exhibit
15 423, it's a document Bates numbered 501932947;
16 correct?

17 A. It is.

18 Q. And it's entitled "SURVEY OF CANCER RESEARCH
19 with emphasis on POSSIBLE CARC -- CARCINOGENS FROM
20 TOBACCO;" right?

21 A. It is.

22 Q. And it's by someone named Teague and it's dated
23 February 2nd, 1953; right?

24 A. Yes.

25 Q. I would like you to direct your attention to the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 page numbered 12 and follow a long with me. And I
2 know it's difficult to read, but the second paragraph
3 reads, "Bearing in mind the above qualifying
4 statements, certain general conclusions may be
5 derived from the data presented." Have I read it
6 correctly so far?

7 A. I believe so, yes.

8 Q. Goes on to say, "In all but a few cases one or
9 more tumors, usually of a malignant type, resulted
10 from application of various tobacco substances to the
11 skins of a variety of test animals." Have I read
12 that correctly?

13 A. I think so.

14 Q. Goes on to say, "In most cases the tumors
15 appeared only after a more or less prolonged latent
16 period." Did I read that correctly?

17 A. I think so, yes.

18 Q. Then it goes on to say, "The results are
19 somewhat inconclusive but indicate that substances
20 derived from tobacco have some degree of carcinogenic
21 activity." Did I read it correctly?

22 A. I think you did, yes.

23 Q. We've now come to the end of that paragraph;
24 haven't we, sir?

25 A. Yes.

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Did The Tobacco Institute ever provide the
2 public the information contained in that paragraph?

3 MR. FLYNN: Objection, it's argumentative,
4 without foundation.

5 A. Not to the best of my knowledge. I don't know
6 what this document is or where it comes from.

7 Q. Well it comes from R. J. Reynolds; doesn't it?

8 A. I don't know. You tell me.

9 Q. Well it says right on the side, "produced by
10 RJRTC;" right?

11 MR. FLYNN: I object, it's argumentative.

12 A. Well if that's visible to you, I congratulate
13 your eyesight. I cannot make that out.

14 Q. You can't make that out on the side of page 12
15 that we were just reading from?

16 A. Well it's difficult.

17 All right, I can.

18 Q. But just so we're clear here, The Tobacco
19 Institute has never provided the public with
20 information that materials applied to animals taken
21 from various tobacco substances cause malignant
22 tumors.

23 MR. FLYNN: Objection, it's argumentative.
24 It misreads what this document says. But it's a
25 separate question, if you can answer it.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. You know, it's difficult for me to know if
2 that's true for every single publication the
3 Institute has ever issued with respect to smoking and
4 health. We may well have included such references.

5 Q. Can you point me or direct me to one?

6 A. I think I was clear in my response that there
7 may be references to this kind of thing in Tobacco
8 Institute documents. If you're asking me do these
9 very words in this order, in these phrases, appear in
10 a Tobacco Institute document, I'd say probably not,
11 since this appears to be from 1953.

12 Q. Well sir, --

13 A. And this is obviously --

14 Q. -- could you get out --

15 A. -- is not a public document.

16 Q. Could you get out Exhibit 413, "The cigarette
17 controversy, eight questions and answers?"

18 A. All right.

19 Q. Now there is information presented about painted
20 or injected mice; correct?

21 A. Where are you in this document?

22 Q. Page eight.

23 A. Thank you.

24 MR. FLYNN: Do you want to focus the
25 witness on where you're looking?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Under the heading "Painted and injected mice."

2 A. All right, uh-huh.

3 Q. Sir, there's nothing contained in this document
4 that talks about painted and injected mice that
5 reveals the information contained in Exhibit 423;
6 right?

7 MR. FLYNN: Again it's argumentative. They
8 both speak for themselves, but --

9 A. Well, you know, I think that this portion on
10 painted and injected mice reveals just what it says
11 it reveals.

12 Does it -- does it transfer word for word from
13 this Teague document? No, it's not meant to.

14 Q. Well sir, there's nothing in The Tobacco
15 Institute booklet entitled "The cigarette
16 controversy, eight questions and answers," concerning
17 painted and injected mice that in any way reveals
18 that experiments where tobacco substances which were
19 applied to the skins of test animals revealed
20 malignant tumors; correct?

21 MR. FLYNN: I object, it's argumentative,
22 and I --

23 You're making the witness compare and read two
24 technical studies. But if you can answer it, answer
25 it.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Well I think it's very clear what the one
2 document says and what the other document says.

3 Q. Well they sure don't say the same thing; do
4 they, sir?

5 MR. FLYNN: Well that's argumentative. And
6 you interrupted the witness's answer.

7 A. I think it's very clear that they're not meant
8 to say the same thing either; isn't it?

9 Q. But of course the cigarette -- I'm sorry -- the
10 tobacco industry document entitled "The cigarette
11 controversy, eight questions and answers" was,
12 according to the very first page, supposed to be a
13 full, free and informed public discussion; right?

14 MR. FLYNN: Again, it's argumentative.

15 A. No, that is not what that means, and I think you
16 understand clearly that this document was never
17 intended to be all-inclusive. It was intended to
18 contribute to that full, free and informed
19 discussion, but it was never intended to be the
20 entire discussion of the -- of the matter.

21 Q. Well sir, it certainly doesn't give us the
22 information that malignant tumors resulted from
23 animals being painted with tobacco condensate; does
24 it?

25 MR. FLYNN: That's argumentative. It

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 speaks for itself. It's also repetitive; you've
2 asked him about five times now.

3 A. It's very clear that that information was
4 available to the public and had been printed in a
5 number of documents, a number of articles in the
6 public press. This was no secret in -- at the time
7 this Tobacco Institute document was published.

8 Q. You're saying the -- the existence of malignant
9 tumors in animals through tobacco skin-painting was
10 well known to the public. Is that what you're
11 saying?

12 MR. FLYNN: Objection, it's argumentative.

13 A. I'm saying that the fact that these experiments
14 have taken place were the subject of articles in
15 widely read publications, such as the Reader's
16 Digest, and were the subject of many press reports,
17 and certainly I think were widely distributed, widely
18 disseminated within this country. I'm sure many
19 people had heard of it and understood it.

20 Q. Sir, are you saying that the evidence that's
21 included in Exhibit 423 concerning the finding at RJR
22 of -- of malignant tumors in 1953 was well known by
23 the public?

24 A. In 1953?

25 Q. Yes.

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I do not know.

2 Q. Sir, isn't it a fact that by 1955, essentially
3 all epidemiological reports demonstrated a
4 correlation between lung cancer and excessive
5 smoking?

6 A. I don't know what's meant by that statement.

7 Q. Well sir, you would agree that by 1955,
8 scientific studies recognized an increase of lung
9 cancer that was probably not environmentally caused?
10 MR. FLYNN: Objection, argumentative. It's
11 also without foundation. He's told you several times
12 he wasn't involved in '55.

13 A. I can't respond to that question without knowing
14 much more about what you're trying to ask me.

15 (Plaintiffs' Exhibit 424 was marked
16 for identification.)

17 BY MS. WIVELL:

18 Q. Sir, showing you what's been marked as
19 Plaintiffs' Exhibit 424, this is a document produced
20 by the Liggett company, Bates numbered 0062293. Have
21 I identified it correctly?

22 A. Yes, you have.

23 Q. And it's entitled "A Review -- A Review
24 Pertaining to the Possible Carcinogenic Activity of
25 Cigarette Smoke;" right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That's --

2 Well that's not really the exact title. You
3 dropped a couple of words.

4 Q. All right. Let me rephrase it. The title of
5 this document is "A Review of Work Pertaining to the
6 Possible Carcinogenic Activity of Cigarette Smoke;"
7 right?

8 A. That is correct.

9 Q. Now if you look down at the bottom of the first
10 page, there is reference to a summary; correct?

11 A. Is that the paragraph which begins "The second
12 part of this review will be devoted to a summary of
13 all of the work which has been done here and at
14 Arthur D. Little Incorporated that is connected with
15 the lung cancer problem?"

16 Q. Yes, sir. Then it goes on to say, "This summary
17 will include: (a) Results of attempts to isolate and
18 identify carcinogenic substances in the smoke from
19 cigarette paper, tobacco and cigarettes..." correct?

20 A. Yes, uh-huh.

21 Q. All right. Sir, this document goes on to relate
22 that there had been a sharp increase in the number of
23 reported cases of lung cancer in recent years;
24 right?

25 MR. FLYNN: Again I object, it speaks for

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 itself. But if you can focus the witness on where
2 you want him to look. It's a some 30-page document.

3 A. This is not something I've seen before. If --
4 if you've got specific questions, can we focus on a
5 section?

6 Q. Certainly.

7 Could you look at the top of the second page.

8 A. All right.

9 Q. And there it says, "In recent years there has
10 been a sharp increase in the number of reported cases
11 of lung cancer." Right?

12 A. Yes, it does.

13 Q. And it goes on to say, later in the same
14 paragraph, "...it seems to be rather generally
15 accepted that there is a real increase in lung cancer
16 incidence;" correct?

17 A. Yes. Yes, it does say that.

18 Q. Now if you go on to page -- the top of page
19 three of this document --

20 A. All right.

21 Q. -- there is reference to studies which found
22 3,4-benzopyrene found in tars collected from burning
23 cigarette paper, tobacco and cigarettes; correct?

24 MR. FLYNN: I object. I -- if you see
25 it --

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I don't think that's page three.

2 Q. Oh, maybe it's page five. I'm sorry. It's the
3 one that ends Bates number 297.

4 A. All right.

5 MR. FLYNN: If you could re-ask the
6 question, please, or reread it.

7 Q. Sir, at the top of page five there is reference
8 to studies which found 3,4-benzopyrene in tars
9 collected from burning cigarette paper, tobacco and
10 cigarettes; right?

11 A. Yes.

12 Q. Now you understand that benzopyrene is a
13 carcinogen; right?

14 MR. FLYNN: Objection, foundation. If you
15 know --

16 A. I understand that there have been charges that
17 benzopyrene is causally related to cancer, yes.

18 Q. And benzopyrene is inhaled every time a smoker
19 inhales a puff of a cigarette; right?

20 A. I don't know that to be the case.

21 Q. You'd leave that to the experts; right?

22 A. That is correct.

23 Q. Okay. Now this document confirms -- no, strike
24 that.

25 Would you look at page 2294 and read it to

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 yourself.

2 MR. FLYNN: Page two of the --

3 A. This is what's page two of the document?

4 Q. Yes, sir.

5 A. All right.

6 All right.

7 Q. Now this portion of the document concerns

8 statistical studies; doesn't it?

9 MR. FLYNN: Again it speaks for itself.

10 Objection.

11 A. Yeah, it concerns some statistical studies on --

12 on lung cancer and smoking.

13 Q. And it concludes that results from numerous

14 statistical studies -- I'm sorry. Strike that. And

15 it concludes that essentially all of these studies --

16 strike that.

17 And it concludes that in essentially all of

18 these studies, the authors reported an apparent

19 correlation between lung cancer incidence and

20 excessive smoking; right?

21 MR. FLYNN: That's -- I object to the

22 partial quote; it's incomplete.

23 A. Yeah, that's one sentence out of it. Yes,

24 uh-huh.

25 Q. And it goes on to talk about there being a

 STIREWALT & ASSOCIATES
 P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 disagreement as to the extent of the correlation;
2 right?

3 A. Yes. It says many of the reports disagree as to
4 the extent of this correlation.

5 Q. Not to the correlation, but to the extent of the
6 correlation; right?

7 A. Yeah.

8 Q. All right. Doesn't say that there's a
9 controversy about whether there was a correlation
10 between lung-cancer incidence and excessive smoking;
11 was -- does it?

12 MR. FLYNN: Objection, it's argumentative.
13 It speaks for itself. It says what it says.

14 A. In that section of it, no, there isn't any such
15 reference.

16 Q. Now sir, this document goes on to attribute one
17 of the causes in -- of the increase of lung cancer to
18 cigarette smoking; doesn't it?

19 MR. FLYNN: Again I object as vague and
20 ambiguous.

21 A. Where are we?

22 MR. FLYNN: What page are you looking at?

23 Q. Could you go back to page five, the one that
24 ends 2297.

25 A. All right. "Summary?"

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Yes, sir. And there it says, "The apparent
2 widespread incidence" -- I'm sorry.

3 And there it says, "The apparent widespread
4 increase of lung cancer incidence seems to point to
5 some causative agent or agents which would exhibit
6 the following properties." Have I read that
7 correctly?

8 A. Yes.

9 Q. All right. And it gives points a. through e.
10 and then goes on to say, "On the basis of the above
11 properties the following factors would be viewed with
12 suspicion." Right?

13 A. Yes.

14 Q. And the last one of those in the list is
15 "Cigarette smoking;" correct?

16 A. The last of four, yes.

17 Q. But it is on the list; right?

18 A. It is.

19 Q. Could you turn to page 309. There at the top is
20 the heading "Experimental Work in Our Laboratories on
21 Possible Carcinogenic Substances in the Combustion
22 Products of Paper, Tobacco and Cigarettes." Right?

23 A. Yes.

24 Q. Would you read this page to yourself, please.

25 MR. FLYNN: The record should reflect part

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 of this is hard to read, especially that second
2 paragraph.

3 A. Well there -- there are parts of this I just
4 can't make out.

5 Q. All right. Well let's see if I can help you.

6 If you'd look at the bottom of the page, do you
7 see where it says, "3,4-Benzopyrene has been
8 identified in smoke condensate from cigarette paper,
9 from both paper and tobacco wrapped cigarettes, and
10 in the trapped and main stream smoke of filter tipped
11 cigarettes?"

12 A. Yes.

13 Q. Did The Tobacco Institute provide in its
14 publications, in its public statements on smoking and
15 health, information that benzopyrene had been
16 identified in materials in smoke condensate?

17 A. I don't know if we did or not.

18 Q. Sir, isn't it a fact that by 1958, when The
19 Tobacco Institute was formed, a variety of scientists
20 within the companies that formed the Institute
21 believed that cigarette smoking caused cancer?

22 A. I don't know if that's a fact or not.

23 MS. WIVELL: This has already been marked.
24 It is Exhibit 304.

25 (Exhibit 304 handed to the witness.)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 MR. FLYNN: For the record, the original
2 has got "CONFIDENTIAL" stamped on it, for whatever
3 note that might be. Okay.

4 THE REPORTER: That is an indication that
5 it's a certified copy of the original, which is back
6 in my office.

7 MR. FLYNN: The word "CONFIDENTIAL?"

8 THE REPORTER: Yes.

9 MR. FLYNN: Okay. It's not the original,
10 but okay.

11 Q. Sir, showing you what's been marked as Exhibit
12 304, this is a report on visit to U.S.A. and Canada,
13 17th April through 12th May 1958 by Bentley, Felton
14 and Reid; correct?

15 A. Correct.

16 Q. And it was produced by B.A.T. Company Ltd. in
17 the Minnesota tobacco litigation; right?

18 A. That is correct.

19 Q. Have you seen this document before?

20 A. I believe I have. It looks somewhat familiar.

21 Q. All right.

22 A. It may have been one I reviewed.

23 Q. Sir, this document reports the visit of these
24 three individuals from the United Kingdom who met
25 with a variety of different people on the subject of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoking and health; right?

2 A. That's what they say they've done, yes.

3 Q. And their itinerary is set forth on page two of
4 the document; right?

5 A. It is.

6 Q. According to the itinerary these folks met with
7 representatives of The American Tobacco Company.

8 A. Correct.

9 Q. And at the time of this meeting the American
10 Tobacco Company was a member of The Tobacco
11 Institute; right?

12 MR. FLYNN: Objection, foundation. But
13 if --

14 A. I don't know what month in 1958 The Tobacco
15 Institute was formed.

16 Q. Fair enough. But at least you know that the
17 American Tobacco Company was one of the initiating
18 members of The Tobacco Institute; right?

19 A. I believe that's correct.

20 Q. Now they also met with representatives from
21 Liggett & Myers; right?

22 A. Yes.

23 Q. Was Liggett & Myers one of the founding members
24 of The Tobacco Institute?

25 A. I don't know, frankly. I'd have to look at the

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 record.

2 Q. They met with folks from Philip Morris; right?

3 A. Yes.

4 Q. And Philip Morris was one of the founding
5 members of The Tobacco Institute; wasn't it?

6 A. I believe so.

7 Q. They also met with representatives of the TIRC
8 in New York; correct?

9 A. Yes.

10 Q. And the TIRC, I think we said earlier, was the
11 forerunner organization of The Council for Tobacco
12 Research?

13 A. Right.

14 Q. Okay. And they met with folks from
15 Sloan-Kettering Institute in New York?

16 A. Yes.

17 Q. They met with people from the National Cancer
18 Institute?

19 A. Yes.

20 Q. And Johns Hopkins?

21 A. Yes.

22 Q. And according to this document, with one
23 exception, the individuals with whom they met
24 believed that smoking causes lung cancer; right?

25 MR. FLYNN: I object, it speaks for

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 itself. But focus the witness on wherever you're
2 extracting that data. You want to focus him on where
3 you want him to look?

4 Q. Page two, sir. Do you see a heading, quote,
5 "'CAUSATION' OF LUNG CANCER?"

6 A. Yes, I do.

7 Q. And there does it say, "With one exception, the
8 individuals whom we met believed that smoking causes
9 lung cancer...?"

10 MR. FLYNN: I --

11 Q. Have I read it --

12 MR. FLYNN: I object to your incomplete
13 reading of a sentence. It's one thing not to read
14 the paragraph, it's another to not even read the
15 sentence. It's an incomplete reading of the
16 statement.

17 MS. WIVELL: All right. Let me rephrase
18 the question.

19 Q. And there it says, quote, "With one exception,
20 paren, H.S.N. Greene, paren, the individuals with
21 whom we met believed that smoking causes lung cancer
22 if by, quote, causation, quote, we mean any chain of
23 events which leads finally to lung cancer and which
24 involves smoking as an indispensable link." Did I
25 read it correctly?

 STIREWALT & ASSOCIATES
 P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes, you did.

2 Q. Sir, the tobacco industry has never provided the
3 information that representatives of American Tobacco
4 and Liggett & Myers, Philip Morris and the TIRC
5 believed that smoking causes lung cancer; --

6 MR. FLYNN: Objection.

7 Q. -- has it?

8 MR. FLYNN: It's argumentative, without
9 foundation.

10 A. The Tobacco Institute has not provided that
11 information, nor do I know that the gentleman who
12 wrote this report accurately reflected the opinions
13 of those whom they spoke with.

14 Q. Well at least that's what it says here; right?

15 MR. FLYNN: Again, objection.

16 A. It says what it says.

17 Q. Now it goes on on page three to discuss
18 carcinogenicity of smoke to animals; right?

19 A. Yes, that's correct.

20 Q. And there it talks about the fact that "No
21 possible doubt now remains that Wynder's results
22 using mouse skin painting are entirely genuine;"
23 right?

24 A. It does say that, yes.

25 Q. The Tobacco Institute never provided the public

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 with information that Wynder's result using mouse
2 skin-painting were genuine; right?

3 MR. FLYNN: Objection, it's argumentative.
4 It's also repetitive; I think you went through this
5 half an hour ago.

6 A. We didn't endorse Wynder's experiments, no.

7 Q. You never provided the information that his
8 experiments were correct, though; did you?

9 A. No, we did not, to the best of my knowledge.

10 Q. Would you turn to page eight. And I'm going to
11 direct your attention to the conclusions paragraph at
12 the bottom of the page. It says there, "Although
13 there remains some doubt as to the proportion of the
14 total lung cancer mortality which can be -- can
15 fairly be attributed to smoking, scientific opinion
16 in the United -- in the U.S.A. does not now seriously
17 doubt that the statistical correlation is real and
18 reflects a cause and effect relationship." Did I
19 read it correctly?

20 A. Yes, you did.

21 Q. The Tobacco Institute never provided the public
22 with the information contained in this paragraph; did
23 it?

24 A. The Tobacco Institute didn't provide the public
25 with this document. I don't think we knew it

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 existed.

2 Q. Sir, but the information contained here that
3 scientific opinion in the United States does not
4 seriously doubt the statistical correlation between
5 lung cancer mortality and smoking was real and
6 reflected a cause and effect relationship, that
7 information never found its way into the public
8 statement that The Tobacco Institute made; did it?

9 MR. FLYNN: Objection, it's vague,
10 ambiguous, argumentative. It's a dual question.
11 There are several statements in the paragraph.
12 You're lumping them all together.

13 A. If you're asking did The Tobacco Institute
14 reproduce this paragraph in any of our publications,
15 the answer is no.

16 Q. And in fact if we go back to Exhibit 413, The
17 Tobacco Institute claims that the case against
18 smoking is based almost entirely on inferences drawn
19 from statistics, and no causal relationship has
20 actually been established; right?

21 MR. FLYNN: Let us find the document.

22 A. 413?

23 MR. FLYNN: Oh, here it is, 413. What page
24 are you looking at?

25 MS. WIVELL: Page four.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. Yes, that's a correct quotation.

2 Q. And in fact it's directly contrary to this
3 document -- to what this document says concerning the
4 attitude of the scientific community in 1958
5 concerning smoking and lung cancer; isn't it?

6 MR. FLYNN: Object, it's totally
7 argumentative, is without foundation. You contrast
8 this whole document to that document.

9 A. Certainly there is a difference of opinion with
10 respect to what scientists believe about smoking and
11 health, and I think these two documents reflect that
12 better than anything else we've talked about today.

13 Q. Well these just aren't scientists that were
14 reflecting this opinion, these are tobacco company
15 scientists; aren't they, sir?

16 A. I don't know. Are they?

17 Q. Well do you recognize the names of the people
18 from American Tobacco Company that these visitors met
19 with?

20 A. No.

21 Q. Do you recognize --

22 A. I don't know them.

23 Q. -- the names of the people from Liggett & Myers
24 who these scientists met with?

25 A. No, don't know them.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Do you recognize the names of the people from
2 Philip Morris who these scientists met with?

3 A. I have a vague recollection of Seligman.

4 Q. And you do recognize the names of some of the
5 people, or at least one of the people who they met
6 with from the TIRC; right?

7 A. Yes, I -- I recognize two of the names.

8 Q. You recognize Dr. Hoyt's name; don't you?

9 A. No Dr. Hoyt here.

10 MR. FLYNN: It's mister on the list.

11 Q. I'm sorry. You recognize Mr. Hoyt's name;
12 right?

13 A. I am not certain if I recognize his name or
14 not. I might. I think he was an administrator.

15 Q. Says they met with Dr. Little, too; right?

16 A. Yes.

17 Q. That's the same Dr. Little who is referred to in
18 Exhibit 408 who claimed that extensive scientific
19 research now under way into tobacco use in human
20 health did not substantiate generalized charges
21 against smoking as a cause of cancer; right?

22 MR. FLYNN: Let the witness find the
23 document to affirm your reading of it, if that's what
24 you want him to do.

25 A. Which page of that were you reading from? First

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 page?

2 Q. I'm reading from the very first paragraph, sir.

3 A. That's what Dr. Little is quoted as saying in

4 this news release.

5 Q. From the TIRC; right?

6 A. That's correct.

7 Q. So he would be one of the people that is

8 included among those who believed that smoking causes

9 lung cancer, at least according to Exhibit 304;

10 right?

11 A. If you accept the statements that the authors of

12 this report, Exhibit No. 304, are making, it would

13 appear that Dr. Little is included.

14 Q. Now sir, could you turn to the last page of

15 Exhibit 304.

16 A. Yes. All right.

17 Q. Do you see point three, "The direct carcino" --

18 I'm sorry. Do you see point three?

19 A. Yes.

20 Q. And that states, "The direct carcinogenicity of

21 smoke condensate to animal tissue, which is

22 consistent with direct causation, is now fully

23 confirmed but the evidence so far obtained makes it

24 unlikely that this activity is due to any single,

25 quote, super carcinogen, quote, in smoke;" correct?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That's what it says, yes.

2 Q. Now that information is not contained in Exhibit
3 413 or any of the other Tobacco Institute documents
4 that talk about animal skin-painting of smoke
5 condensate; is it?

6 A. No. That's the opinion of these particular
7 authors, apparently.

8 Q. Based on what they learned from these people
9 they visited; right?

10 A. I don't know if it's based on that or something
11 else.

12 Q. Well you read this document before in
13 preparation for your deposition; right?

14 A. Yes, uh-huh.

15 Q. And you understand that this is a summary of
16 what they learned while they were in the United
17 States.

18 MR. FLYNN: Objection, it speaks for
19 itself.

20 A. I -- I understand that that is the purpose of
21 this document, yes.

22 Q. And in fact if we look down at point five, we
23 see that "The U.S. tobacco industry has accepted, de
24 facto if not de jure, the opinion of Wynder and
25 others that a reduction of overall production of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 smoke per unit weight of cigarette is a useful step;"

2 correct?

3 A. That is what it says.

4 Q. Now sir, that information was never provided by

5 The Tobacco Institute either; was it?

6 A. It was not, to the best of my knowledge.

7 Q. Did The Tobacco Institute ever provide in any of

8 its public statements information that there were a

9 variety of compounds in cigarette smoke that will

10 produce cancer?

11 MR. FLYNN: Objection, it's argumentative,

12 vague and ambiguous, and overbroad.

13 A. I don't know if at sometime or another we might

14 have said something like that in all the publications

15 we -- we had available. I don't know.

16 Q. What are polycyclic aromatic hydrocarbons?

17 A. I don't know.

18 Q. All right. You know that they are found in

19 cigarette smoke, right?

20 A. I believe I've heard that.

21 Q. All right. And you know that polycyclic

22 aromatic hydrocarbons isolated from smoke are known

23 to produce cancer in mice.

24 A. I can't say I know that, no.

25 Q. Did anyone ever provide you with information

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 from R. J. Reynolds that showed they had done
2 in-house research that showed polycyclic aromatic
3 hydrocarbons isolated from smoke were known to
4 produce cancer in mice?

5 A. I don't recall it.

6 (Document handed to the court reporter
7 for marking.)

8 MS. WIVELL: Oh, stop. This exhibit has
9 already been marked as Plaintiffs' Exhibit 1049.

10 MR. FLYNN: Has it been used in a
11 deposition? 1049.

12 (Plaintiffs' Exhibit 1049 handed to
13 the witness.)

14 BY MS. WIVELL:

15 Q. Sir, I have had the court reporter place before
16 you what was previously marked as Exhibit 1049. Was
17 this a document that you saw in preparation for your
18 deposition?

19 A. I don't believe so.

20 Q. This is a document Bates numbered 500945942;
21 right?

22 A. 5942. I think that's right.

23 Q. Okay. And it's entitled "THE OPTIMUM
24 COMPOSITION OF TOBACCO AND ITS SMOKE;" right?

25 A. Yes.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. It's dated November 2nd, 1959.

2 A. Yes, it is.

3 Q. Could you take a moment and read the first page.

4 A. All right.

5 Q. Now sir, this first page of this document talks

6 about the presence of carcinogenic or

7 cancer-producing polycyclic hydrocarbons; correct?

8 MR. FLYNN: I object, it's an incomplete

9 reference, but --

10 A. One of the things it talks about.

11 Q. And one of those polycyclic hydrocarbons that it

12 talks about is benzopyrene; right?

13 MR. FLYNN: Again, object, it's an

14 incomplete description and quote of the thing, if

15 you're quoting it. But --

16 A. It says 3,4-benzopyrene, which I guess is what

17 you're referring to.

18 Q. All right. And it says since that first report

19 in 1954, quote, approximately 60 similar compounds

20 have been isolated from the smoke of cigarettes,

21 close quote; right?

22 A. It does.

23 Q. Now it goes on to talk about eight of those

24 polycyclic hydrocarbons isolated from smoke; right?

25 A. Yes, uh-huh.

STIREWALT & ASSOCIATES

P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. And it says that those eight polycyclic
2 hydrocarbons isolated from smoke are known to produce
3 cancer in mice; right?

4 A. Yes.

5 Q. Now it goes on to say that while there is no
6 evidence of any of these compounds producing cancer
7 in man, quote, "Nonetheless, there is a distinct
8 possibility that these substances would have a
9 carcinogenic effect on the human respiratory system;"
10 right?

11 A. Yes.

12 Q. Now sir, did the Tobacco Institute ever provide
13 information to the -- in any of its public statements
14 about smoking and health to the effect that there
15 were substances which were known carcinogens in smoke
16 which would probably have an effect on the human
17 respiratory system?

18 A. No, nothing that -- that would have attributed
19 such a statement to us.

20 Q. Okay. And did you ever learn this information
21 before I gave you this document today?

22 A. Well there seem to be bits and pieces of it that
23 are somewhat familiar, perhaps from some of the
24 reading I've done over the years. I am confident
25 I've never seen this document before.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Now it goes on to say, "Medical experience has
2 shown that man responds to various chemical
3 substances in the same manner as experimental
4 animals;" doesn't it?

5 A. It does.

6 Q. Now we reviewed today several different
7 documents which talked about animal painting,
8 skin-painting and experiments; right?

9 A. Yes, we have.

10 Q. And in none of those was the information
11 contained in this document about the carcinogenic
12 effect of these substances that are referred to here
13 disclosed.

14 MR. FLYNN: Objection, it's argumentative,
15 without foundation. But -- it's also so broad I
16 don't know how it could be answered, but go ahead,
17 answer it if you can.

18 A. If you could repeat that question and perhaps
19 condense it, it would help me.

20 Q. All right. In the documents we saw, the public
21 statements from The Tobacco Institute that we looked
22 at earlier today, the information was not
23 contained -- strike that.

24 In the documents we saw earlier today, the
25 public statements from The Tobacco Institute, there

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 were no references to the presence of polycyclic
2 hydrocarbons from smoke condensate and their
3 carcinogenic effect; were there?

4 MR. FLYNN: I object, they all speak for
5 themselves. But if you can recall them. All you can
6 ask is for his recall.

7 A. To the best of my recollection, there weren't
8 any such references.

9 Q. I'm sorry, I have a bit of a hearing problem.
10 You said there were not?

11 A. To the best of my recollection, there were no
12 such references.

13 Q. This paragraph goes on to say it was
14 therefore -- I'm sorry.

15 This paragraph goes on to say, "It follows
16 therefore that it would be better for the consumer if
17 cigarette smoke were devoid of such compounds;"
18 right?

19 A. It does.

20 Q. And this information was never furnished to you
21 while you were at The Tobacco Institute at any time?

22 MR. FLYNN: Object, it's vague and
23 ambiguous. Which information?

24 A. If you mean by that this document, I am
25 confident that I have not seen this document before

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 today.

2 Q. Sir, isn't it a fact that as early as 19 --

3 as -- strike that.

4 Isn't it a fact that in the early 1960s, members
5 of The Tobacco Institute were well aware that there
6 were cancer-causing substances in cigarettes?

7 MR. FLYNN: Argumentative, vague.

8 A. I don't know.

9 Q. Well carcinogenic means cancer-causing; doesn't
10 it?

11 A. I believe it does.

12 Q. And there are references to those kinds of
13 materials being found in smoke condensate in Exhibit
14 1049; aren't there?

15 MR. FLYNN: That's repetitive. You've
16 already asked and answered this.

17 A. There are references to that in this exhibit.

18 (Plaintiffs' Exhibit 425 was marked
19 for identification.)

20 BY MS. WIVELL:

21 Q. Sir, showing you what's been marked as
22 Plaintiffs' Exhibit 425, it is a document Bates
23 numbered 2021382496; correct?

24 A. Correct.

25 Q. And it is dated March 15th, 1961; right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. It is.

2 Q. And it's headed "Arthur D. Little, Inc.;" right?

3 A. Yes.

4 Q. And this is a document produced by Liggett &
5 Myers dated 3-15-61; right?

6 MR. FLYNN: Objection, there's no
7 foundation. How he'd know where the document came
8 from, I don't know.

9 MS. WIVELL: Fair enough.

10 A. I don't know.

11 Q. Let me withdraw the question.

12 This document is dated March 15th, 1961; isn't
13 it?

14 A. Yes, it is.

15 Q. Now Arthur D. Little, that's a name that came up
16 just a few minutes ago; didn't it?

17 A. Yes, it did, in some context or another.

18 Q. Do you understand, based on your knowledge, that
19 Arthur D. Little, Inc. was a testing lab; wasn't it?

20 A. I understood they did research or contracted
21 research.

22 Q. Laboratory research.

23 A. Yes.

24 Q. Okay. This document is headed "CONFIDENTIAL
25 LIMITED;" right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. Yes, it is.
- 2 Q. Then it says, "L&M - A PERSPECTIVE REVIEW."
- 3 A. Yes.
- 4 Q. It says, "There are biologically active
- 5 materials present in cigarette tobacco." Right?
- 6 A. That's correct.
- 7 Q. Goes on to say, "These are," and then it lists
- 8 four things; right?
- 9 A. It does.
- 10 Q. The first is "cancer causing;" right?
- 11 A. Correct.
- 12 Q. The second is "cancer promoting;" right?
- 13 A. Yes.
- 14 Q. The third is "poisonous;" right?
- 15 A. Correct.
- 16 Q. And the fourth is "stimulating, pleasurable, and
- 17 favorable;" right?
- 18 A. "Flavorful."
- 19 Q. "Flavorful;" right?
- 20 A. Yes, ma'am.
- 21 Q. Now it goes on to list the poisonous group. It
- 22 includes carbon monoxide and nitrous oxide; correct?
- 23 A. Those are two of them.
- 24 MR. FLYNN: Objection.
- 25 A. I don't know what the third one is.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. I can't read it either. It says that they
2 cannot be reduced, though; doesn't it?

3 MR. FLYNN: It speaks for itself.

4 A. Yeah. Yes.

5 Q. Then the next paragraph --

6 MR. FLYNN: I object. It says there is no
7 reason why they couldn't be reduced, when you read
8 the document.

9 MS. WIVELL: I'm sorry, fair enough.

10 Q. Goes on --

11 It says that there's no reason why the poisonous
12 group cannot be reduced; right?

13 A. That is correct.

14 Q. And it suggests ways that they might be reduced,
15 including filtration.

16 A. Yes, uh-huh.

17 Q. The next paragraph or the next point, point
18 number three, refers to the cancer-promoting material
19 including esters, phenols, something I can't read.
20 Correct?

21 A. Yes.

22 MR. FLYNN: Objection, it's an incomplete
23 reference, but go ahead. It says "can possibly be
24 reduced."

25 Q. And point four talks about the cancer-causing

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 materials present in cigarette tobacco; right?

2 MR. FLYNN: It speaks for itself. But --

3 A. Yes, it says more than that, frankly, but that's
4 a part of it.

5 Q. Okay. It says, "The cancer-causing materials
6 apparently are in many substances that are pyrolyzed
7 but seem to be associated with tobacco in greater
8 concentration than for primary cellulose;" right?

9 A. Is that "primarily cellulose?"

10 Q. "For primarily cellulose?"

11 A. That's nonsense. I don't understand that.

12 Q. All right. But that's what it says; right?

13 A. I guess.

14 Q. Did The Tobacco Institute ever provide in any of
15 its public statements the fact that there were
16 biologically active materials present in cigarette
17 smoke?

18 A. I'm not aware that we ever used those words in
19 any of our publications.

20 Q. Did The Tobacco Institute in any of its public
21 statements concerning smoking and health reveal that
22 there were cancer-promoting materials in cigarette
23 tobacco?

24 MR. FLYNN: Objection, argumentative,
25 without foundation.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I don't recall that The Tobacco Institute in any
2 of our public statements or materials ever said that
3 there were cancer-promoting materials in tobacco or
4 tobacco smoke.

5 Q. All right. Did The Tobacco Institute in any of
6 its public statements concerning smoking and health
7 ever reveal to the public that there were
8 cancer-causing materials in tobacco or tobacco
9 smoke?

10 MR. FLYNN: Objection, it's argumentative.
11 It's so broad and un -- and without limitation.

12 A. We wouldn't have made any statements that
13 were -- that we attributed to our own opinion;
14 however, we certainly would have referred to those
15 opinions of others with respect to cancer causation
16 and smoking.

17 Q. Well how about the information that's contained
18 in this document, did The Tobacco Institute ever tell
19 the public in any of its public statements that there
20 were cancer-causing agents in cigarette tobacco?

21 MR. FLYNN: Objection, repetitive, vague
22 and ambiguous, argumentative. I think he just
23 answered it.

24 A. If --

25 You know, if the question refers to this

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 document, it's clearly an internal document which
2 would not have been shared with The Tobacco
3 Institute, so we couldn't have been expected to
4 reproduce it.

5 Q. Well sir, you told me earlier in testimony in
6 this deposition that one of the sources that The
7 Tobacco Institute got information from was its member
8 tobacco companies; correct?

9 A. Oh, yes.

10 Q. And the industry --

11 To go back to my question: Did The Tobacco
12 Institute at any time in any of its public statements
13 ever say that there were cancer-causing materials in
14 tobacco?

15 MR. FLYNN: Again it's repetitive, vague,
16 argumentative. You've answered it.

17 A. We may have attributed that speculation to
18 others, but it's not a statement that we would have
19 made or claimed and attributed to ourselves.

20 Q. Now Liggett & Myers at the time this report was
21 dated was a member of The Tobacco Institute; wasn't
22 it?

23 A. I believe so, although I'm not certain.

24 Q. All right. Let's get out The Tobacco Institute
25 answers to interrogatories, which are Exhibit 402.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

- 1 A. I have it.
- 2 Q. Would you turn to page 15?
- 3 A. I have it.
- 4 Q. And there under 1961 you see that Liggett &
- 5 Myers was a member of The Tobacco Institute at the
- 6 time this document was dated; correct?
- 7 A. Correct.
- 8 Q. This is just --
- 9 The information that's contained in this
- 10 document was just never provided to The Tobacco
- 11 Institute; is that right?
- 12 A. Not to the best of my knowledge. I'm not
- 13 familiar with it.
- 14 Q. Since you have Exhibit 402 in front of you,
- 15 could you turn to page 15 again and tell me if RJR,
- 16 R. J. Reynolds, was a member of The Tobacco Institute
- 17 in 1959, the date of Exhibit 1049?
- 18 A. Yes, it was.
- 19 Q. And the information contained in Exhibit 1049
- 20 was never provided to The Tobacco Institute; was it?
- 21 A. Not to the best of my knowledge.
- 22 Q. Now in 1961 Philip Morris was a member of The
- 23 Tobacco Institute; wasn't it?
- 24 A. Yes, it was.
- 25 Q. And isn't it a fact that Philip Morris, as of

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 1961, knew that there was a statistical association
2 that suggested that smoking may be a causative factor
3 in lung cancer, bladder cancer and cardiovascular
4 disease?

5 MR. FLYNN: Objection, there's no
6 foundation. How is he supposed to know that?

7 A. Yeah. I don't know what Philip Morris may have
8 known in 1961.

9 Q. Well that's information that Philip Morris never
10 provided to The Tobacco Institute, at least that
11 you're aware of; right?

12 A. Not to the best of my recollection.

13 THE REPORTER: Can we go off the record a
14 moment, please.

15 (Discussion off the record.)

16 (Plaintiffs' Exhibit 426 was marked
17 for identification.)

18 MS. WIVELL: Oh, I'm sorry. This has
19 previously been marked as 152.

20 THE REPORTER: Off the record, please.

21 (Discussion off the record.)

22 (Plaintiffs' Exhibit 426 was withdrawn
23 from evidence.)

24 MR. FLYNN: It's now 152. Is that the
25 exhibit?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 THE REPORTER: That's correct.

2 BY MS. WIVELL:

3 Q. Sir, showing you what previously was marked as

4 Exhibit 152, it's a document Bates numbered

5 1000277423; correct?

6 A. Yes, that's correct.

7 Q. And if we turn to the second page of the

8 document, we can see that it's a Philip Morris

9 document entitled "TOBACCO AND HEALTH-R&D APPROACH."

10 Right?

11 A. Correct.

12 Q. And it was presented to the R&D committee by Dr.

13 H. Wakeham at a meeting held on November 15th, 1961;

14 right?

15 A. Right.

16 Q. Now sir, could you turn to the Bates number that

17 ends 434.

18 A. All right.

19 Q. There is a list entitled "PARTIAL LIST OF

20 COMPOUNDS IN CIGARETTE SMOKE ALSO IDENTIFIED AS

21 CARCINOGENS;" correct?

22 A. That is correct.

23 Q. And if we look at page -- the page that ends in

24 435, there is also a list of some cancer-promoting

25 agents; right?

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. That is correct.

2 Q. Now sir, did The Tobacco Institute ever provide
3 this list of compounds that's on page 434 in any of
4 its public statements, compounds from cigarette smoke
5 that were identified as carcinogens?

6 MR. FLYNN: Objection, there's no
7 foundation.

8 A. Not to the best of my knowledge.

9 Q. Turning to the list of cancer-promoting agents,
10 did The Tobacco Institute ever provide in any of its
11 public statements any of the list of cancer-promoting
12 agents that are found in this document?

13 MR. FLYNN: Same objections, there's no
14 foundation, but go ahead.

15 A. Not to the best of my knowledge.

16 Q. Would you turn to the page that ends with Bates
17 number 431.

18 A. All right.

19 Q. It's titled "EVIDENCE LINKING CANCER AND
20 TOBACCO;" correct?

21 A. Yes, it is.

22 Q. And it says, "Based on two main points;" right?

23 A. Yes.

24 Q. Talks about "Statistical evidence that certain
25 diseases are more prevalent among smokers than

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 non-smokers;" right?

2 A. Yes.

3 Q. That lists lung cancer, bladder cancer and
4 cardiovascular disease.

5 A. Yes.

6 Q. Goes on to say, "These associations suggest that
7 smoking may be a causative factor;" doesn't it?

8 A. It does.

9 Q. And sir, did The Tobacco Institute in any of its
10 public statements ever tell the public that smoking
11 may be a causative factor of lung cancer, bladder
12 cancer or cardiovascular disease?

13 MR. FLYNN: Again I object, it's
14 repetitious -- repetitive and argumentative, going
15 through what they told people. But --

16 A. By reference to statements from anti-tobacco
17 scientists we may have, certainly.

18 Q. But certainly The Tobacco Institute has never
19 disclosed that a research development scientist from
20 Philip Morris believed that smoking may be a
21 causative factor in lung cancer, bladder cancer or
22 cardiovascular disease; right?

23 MR. FLYNN: Objection, objection, it's
24 argumentative, it assumes a set of knowledge not
25 established. But you can answer it.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 A. I don't know, but that's -- that's Mr. Wakeham's
2 conclusion. I haven't read this.

3 Q. Well it does say, quote, "These associations
4 suggest that smoking may be a causative factor;"
5 doesn't it?

6 A. It does. I don't know if that's his conclusion
7 or if he's quoting someone else.

8 Q. But at least The Tobacco Institute never said,
9 "Here we have evidence from within the tobacco
10 companies themselves that smoking may be a causative
11 factor in lung cancer, bladder cancer or
12 cardiovascular disease;" right?

13 MR. FLYNN: I object, it's argumentative
14 and overbroad. It's also repetitive, I think.

15 A. The Tobacco Institute, to the best of my
16 knowledge, did not make such a statement.

17 Q. Sir, could you turn to the page that ends 430.

18 A. All right.

19 Q. There do you see the definition for carcinogen?

20 A. Yes.

21 Q. It's defined as a substance which, applied to
22 the tissue of a test animal, gives rise to tumor
23 formation; right?

24 A. Yes.

25 Q. Then it goes on to say, "In tests for carcinogen

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 it is assumed that tumors ultimately lead to
2 cancerous growth, and that a carcinogen -- carcinogen
3 so demonstrated in test animals is dangerous to man;"
4 right?

5 A. That's correct.

6 Q. Now did The Tobacco Institute ever provide in
7 any of its public statements information that
8 carcinogens in animals were dangerous to man?

9 MR. FLYNN: Again I object, it's
10 argumentative and so overbroad. But if you know.

11 A. I think The Tobacco Institute may in its
12 publications have made reference to those statements
13 made by others, but certainly that wouldn't have been
14 a statement we would have made.

15 Q. And it certainly was never attributed to anyone
16 from inside the tobacco industry; was it?

17 A. Not to the best of my knowledge.

18 Q. Could you turn to the page that ends 422 -- no,
19 442. This page is entitled "REDUCTION OF CARCINOGENS
20 IN SMOKE." Correct?

21 A. That's correct.

22 Q. And the first point is that carcinogens are
23 found in practically every class of compounds in
24 smoke; right?

25 A. Correct.

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 Q. Did The Tobacco Institute ever provide
2 information in any of its public statements on
3 smoking and health that carcinogens were found in
4 practically every class of compounds in smoke?

5 A. Not to the best of my knowledge.

6 Q. Now this document goes on to say, "The best we
7 can hope for is to reduce a particularly bad class,
8 i.e., the polynuclear hydrocarbons, or phenols;"
9 correct?

10 A. Correct.

11 Q. Did The Tobacco Institute in any of its public
12 statements ever inform the public that the best The
13 Tobacco Institute -- or the tobacco industry could
14 hope to do was to reduce one or two -- or the bad
15 class of carcinogens?

16 A. Not to the best of my knowledge.

17 MS. WIVELL: Why don't we stop there for
18 the day.

19 THE REPORTER: Off the record, please.

20 (Deposition recessed at 4:56 o'clock p.m.)

21

22

23

24

25

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of WALKER P. MERRYMAN at the time and place
6 aforesaid; and that the foregoing transcript
7 consisting of pages 1 through 261 is a true and
8 correct, full and complete transcription of said
9 shorthand notes, to the best of my ability.

10 Dated at Washington, D.C., this 15th day of
11 July, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

18

19

20

21

22

23

24

25

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953

1 C E R T I F I C A T E

2 I, WALKER P. MERRYMAN, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 1 through 261, and that said
5 transcript is a true and correct, full and complete
6 transcription of my deposition except:

7

8

9

10

11

12

13

14

15 WALKER P. MERRYMAN

16 Deponent

17

18 Sworn and subscribed to before me this day
19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953